

Courtesy Copy

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROLV BERG DRIVE AS,

Plaintiff,

- against -

NORTH OFFSHORE AS and TROMS  
OFFSHORE AS,

Defendants.

07 Civ. 11502 (0A)

VERIFIED COMPLAINT

Plaintiff ROLV BERG DRIVE AS ("RBD"), by its attorneys Blank Rome, LLP, complaining of the above-named Defendants NORTH OFFSHORE AS ("NOA") and TROMS OFFSHORE AS ("TOAS"), alleges upon information and belief as follows:

1. This is a case of admiralty and maritime jurisdiction, as hereinafter more fully appears, and is an admiralty or maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. The Court has subject matter jurisdiction.

2. At all material times, RBD was and now is a foreign company organized and existing under the laws of Norway.

### **IDENTITY OF DEFENDANTS**

3. Defendant NOA is the 100% owner of the shares of three subsidiaries: (1) North Brokers and Agency AS, (2) Troms Offshore MPSV AS and (3) TOAS.

4. At all material times, defendant NOA was and now is a corporation organized and existing under the laws of Norway.

5. TOAS is also a Norwegian company and 100% owned by NOA.

### **THE BASIC FACTS**

#### **(2) THE PRIOR ACTION**

6. NOA filed a Rule B action in the Court against RBD, as defendant (07 CIV 3095 (SHS)), by complaint dated April 17, 2007 (the "Related Rule B Action").

7. NOA defended against RBD's claim for Supplemental Rule E counter-security in that action on the basis that RBD's claims under a side letter agreement dated March 5, 2005 (the "Side Letter") which is the basis for this action, arose from a "separate transaction or occurrence" to the claim asserted under the charter for the Vessel on which NOA sued.

8. RBD's Rule E counter-security request was denied by Order dated November 5, 2007, as discussed in the accompanying memorandum of law.

### **THE NORWEGIAN PROCEEDINGS**

9. Pursuant to the Side Letter, RBD agreed to the charter of an ocean-going vessel "AHTS ALDOMA" (the "Vessel" or "ALDOMA").

10. The claims arising under a Side Letter agreement are maritime and, pursuant to a “writ” dated November 7, 2007, have been filed in the Nord-Troms County Court in Norway.

11. A true copy of the Norwegian Pleadings is Exhibit 2 to the accompanying declaration of Olav Vikoren. (Exhibit E to the Harwood Declaration) A “free” and accurate translation of the Norwegian portion of the Norwegian Pleadings into English is Exhibit 3 thereto.

### THE CHARTER OF THE VESSEL

12. Arktikmorneftegazrazvedka of Murmansk, Russia (“AMNGR”) is the registered owner of the Vessel.

13. In an email attached as Exhibit 1 to the affirmation of AMNGR’s director general, Oleg S. Mnatsakanyan, dated October 1, 2007, filed in the Related Rule B Action (07 Civ. 3095), AMNGR’s lawyers confirmed that a charter between AMNGR, as owner of the Vessel, and NOA, as charterer, does not expire until 2009. Vikoren Dec. Ex. 7 (Id., ¶ 7):

Artik [AMNGR] has concluded a C/P with NO [North Offshore] for a period up to 5th May 2009, including two options on [sic] one year each.

Id., Ex. 3.

14. TOAS’s website pages records that TOAS is presently “operating” the Vessel, under charter form her Russian owners. Id., Ex. 8.

15. To the extent that hire payments are being remitted to AMNGR by any of North Offshore’s subsidiaries, including but not limited to its subsidiary listed as

“operator” of the Vessel, then such payments are in respect of hire obligations by and between North Offshore and AMNGR in respect of the new charter and represent monies belonging to North Offshore being siphoned through the subsidiaries.

16. Upon information and belief, Defendant TOAS is a shell corporation through which NOA conducts the charter business of the Vessel.

17. Upon information and belief, Defendant TOAS acts as paying agent or receiving agent for hire and sub-hire payments for the Vessel or arranges for non-parties to satisfy the debts and obligations of Defendant NOA and/or receive payments being made to defendant NOA.

18. Upon information and belief, Defendant NOA uses Defendant TOAS as a “pass through” entity in order to insulate itself from charters relating to its commercial obligations.

19. AMNGR’s lawyers have confirmed that NOA is the present charterer of the Vessel and the Hoel Declaration dated October 1, 2007 in the Related Rule B Action identifies hire payments it is making to AMNGR for the Vessel as “bareboat” charter hire. Harwood Dec. Ex. E, Vikoren Dec. Ex. 6, ¶ 23.

20. Hire payments being collected by TOAS and paid to AMNGR as operator belong to NOA.

### **COUNT I**

### **RULE B RELIEF**

21. Plaintiff repeats paragraphs 1 through 20 as if fully set forth herein.

22. Plaintiff seeks issuance of process of maritime attachment so that it may obtain security for its claims in the Norwegian Proceeding including its Norwegian attorneys' fees and costs which are routinely awarded in Norwegian proceedings and no security for Plaintiff's claim has been posted by NOA or TOAS or anyone acting on their behalf to date.

23. At best as can now be estimated, Plaintiff expects to recover the following amounts in the Norwegian Proceeding:

A. On the principal claim	\$12,592,500
B. On the performance bond	\$ 442,150
C. Estimated Recoverable Lawyers and Arbitrators' Fees & "Costs"	\$ <u>60,000</u>
<b>TOTAL:</b>	<b><u>\$13,094,650</u></b>

24. Defendants cannot be found within this district within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("Rule B"), but is believed to have, or will have during the pendency of this action, assets in this jurisdiction.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Verified Complaint;

B. That since Defendants cannot be found within this District pursuant to Rule B, this Court issue an Order directing the Clerk of Court to issue Process of Maritime

Attachment and Garnishment pursuant to Rule B attaching all of Defendants' tangible or intangible property or any other funds held by any garnishee properly served with the process of maritime attachment and garnishment in this district, which are due and owing to Defendants up to the amount of \$13,094,650 to secure the Plaintiff's claims, and that all persons claiming any interest in the same be cited to appear and, pursuant to Rule B, answer the matters alleged in the Verified Complaint;

C. That this Court retain jurisdiction over this matter through the entry of a judgment or award associated with the pending claims including appeals thereof.

D. That Plaintiff may have such other, further and different relief as may be just and proper.

Dated: New York, NY  
December 21, 2007

Respectfully submitted,  
BLANK ROME, LLP  
Attorneys for Plaintiff

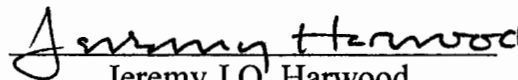
By Jeremy J.O. Harwood  
Jeremy J.O. Harwood (JH 9012)  
405 Lexington Avenue  
New York, NY 10174  
Tel.: (212) 885-5000

**VERIFICATION**

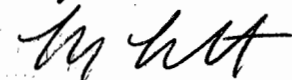
STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

Jeremy J.O. Harwood, being duly sworn, deposes and says:

1. I am a member of the bar of this Honorable Court and of the firm of Blank Rome, LLP, attorneys for Plaintiff.
2. I have read the foregoing Complaint and I believe the contents thereof are true.
3. The reason this Verification is made by deponent and not by Plaintiff is that Plaintiff is a foreign corporation, no officer or director of which is within this jurisdiction.
4. The sources of my information and belief are documents provided to me and statements made to me by representatives of Plaintiff.

  
Jeremy J.O. Harwood

Sworn to before me this  
21st day of December 2007

  
Notary Public

**LEROY LAMBERT**  
Notary Public, State of New York  
No. 31-4970459  
Qualified in New York County  
Commission Expires November 27, 2010



BLANK ROME LLP  
Attorneys for Plaintiff  
Jeremy J.O. Harwood (JH 9012)  
405 Lexington Avenue  
The Chrysler Building  
New York, NY 10174  
(212) 885-5000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROLV BERG DRIVE AS,

Plaintiff,

- against -

NORTH OFFSHORE AS and TROMS  
OFFSHORE AS,

Defendants.

07 Civ.

**AFFIDAVIT UNDER  
SUPPLEMENTAL RULE B**

STATE OF NEW YORK     )  
                                      : ss.:  
COUNTY OF NEW YORK    )

JEREMY J.O. HARWOOD, being duly sworn, deposes and says:

1. I am a member of the Bar of this Honorable Court and a member of the firm of Blank Rome, LLP, attorneys for the Plaintiff herein. I am familiar with the circumstances of the complaint and submit this affidavit in support of Plaintiff's request for the issuance of process of maritime attachment and garnishment of the property of defendants North Offshore AS and Troms Offshore AS, companies organized and



existing under the laws of Norway, pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

2. The defendants are not incorporated or registered to do business in this State.

3. Under my supervision, my office did a search of the New York State Secretary of State, Division of Corporations, Transportation Tickler (2006 edition), telephone assistance in New York City, and the internet Yellow Pages.

4. In our search, we did not find any listing or reference to defendants in this district or state.

5. In the circumstances, I believe the defendants cannot be "found" within this district.

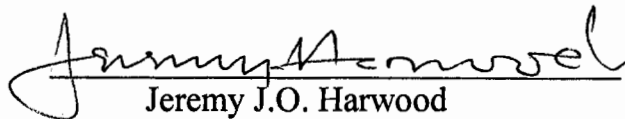
6. I attach as Exhibit A hereto a true copy of the memorandum of law dated October 1, 2007 filed by North Offshore AS ("NOA") in a related action (07 CIV. 3095) (the "Related Rule B Action").

7. I attach as Exhibit B hereto a true copy of the hearing transcript on October 3, 2007 in the Related Rule B Action.

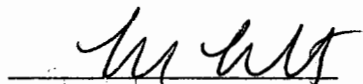
8. I attach as Exhibit C hereto a true copy of the memorandum opinion in the Related Rule B Action dated November 29, 2007.

9. I attach as Exhibit D hereto a true copy of the order dated November 5, 2007 in the Related Rule B Action.

10. I attach as Exhibit E hereto a true copy of the declaration of Olav Vikøren dated December 21, 2007 with exhibits. The original executed document will be filed upon receipt.

  
Jeremy J.O. Harwood

Sworn to before me this  
21st day of December, 2007

  
Notary Public

**LEROY LAMBERT**  
Notary Public, State of New York  
No. 31-4970459  
Qualified in New York County  
Commission Expires November 27, 2010

**EXHIBIT A**  
**TO THE AFFIDAVIT OF JEREMY J.O. HARWOOD**  
**DATED DECEMBER 21, 2007**

Michael J. Frevola  
Christopher R. Nolan  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200

ATTORNEYS FOR PLAINTIFF  
NORTH OFFSHORE AS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NORTH OFFSHORE AS,

Plaintiff,

-against-

ROLV BERG DRIVE AS,

Defendant.

07 Civ. 3095 (SHS)

**MEMORANDUM OF LAW OF NORTH OFFSHORE AS  
IN OPPOSITION TO THE MOTION OF ROLV BERG DRIVE AS  
FOR COUNTERSECURITY PURSUANT TO SUPPLEMENTAL RULE E(7)(a)**

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**PRELIMINARY STATEMENT**

The application of defendant Rolv Berg Drive AS ("RBD") for an order directing plaintiff North Offshore AS ("North Offshore") to post countersecurity on RBD's counterclaims presents the following issues for determination:

Rule E(7)(a) limits a countersecurity application to counterclaims arising from the same transaction or occurrence that is the subject of the original action. RBD's counterclaim alleges a breach of an option contract dated March 5, 2004, while North Offshore's claims are for unpaid charter hire and redelivery expenses under an agreement dated February 16, 2004. Should this Court order North Offshore to post countersecurity where RBD's counterclaim arises out of separate facts and a separate contract?

A Court has the discretion to deny a countersecurity application for cause shown, including where the counterclaim is frivolous or clearly lacking in merit. RBD has not filed any papers supporting its application, while North Offshore has submitted an affirmation from a third party that shows that RBD's extension option was precluded by a condition precedent. Should this Court order North Offshore to post countersecurity where RBD's underlying right to its option claim is refuted by a third party?

A Court has the discretion to deny a countersecurity application for cause shown, including where the plaintiff is financially unable to post countersecurity. North Offshore has submitted affirmation and documentary proof that it is unable to post countersecurity, in large part due to RBD's failure to pay the very hire payments and redelivery expenses at issue in this proceeding. Should this Court order North Offshore to post countersecurity where it is financially unable to do so and that inability largely is attributable to the party seeking countersecurity?

## STATEMENT OF FACTS

### A. The Charter Parties

North Offshore entered into a time charter party with RDB on February 16, 2004 of the AHTS ALDOMA for a period of three years on the SUPPLYTIME 89 form (as amended) (the "Time Charter"). Affirmation of Svein Hoel dated October 1, 2007 ("Hoel Aff."), ¶ 3 & Ex. 1.<sup>1</sup> Shortly after the commencement of the Time Charter, North Offshore entered into a *separate* "side agreement" with RBD dated March 5, 2004 that provided RBD with a possibility of extending the charter period of the ALDOMA in certain circumstances. *Id.* ¶ 4. RBD's rights to extend the ALDOMA's charter under the side agreement, however, specifically were subject "to [North] Offshore securing further charter with the vessel's owner." *Id.* & Ex. 2.

The ALDOMA's owner is Arktikmorneftegazrazvedka ("AMNGR"), a Russian company with offices in Murmansk, Russia. *Id.* ¶ 5. North Offshore had the ALDOMA under bareboat charter from AMNGR during the initial portion of the Time Charter. *Id.* North Offshore entered into a renewed bareboat charter party with AMNGR for the ALDOMA commencing on March 6, 2006 for a period of 14 months until May 2007 on the SUPPLYTIME 89 form as suitably amended (the "Bareboat Charter"). *Id.* & Ex. 3; *see also* Affirmation of Oleg S. Mnatsakanyan dated October 1, 2007 ("Mnatsakanyan Aff."), ¶ 3 & Ex. 1. The Bareboat Charter is dated ten months earlier than the commencement of that charter because RBD sought to induce AMNGR to breach its charter agreement with North Offshore. Hoel Aff., ¶ 5. Ultimately, AMNGR agreed to perform the Bareboat Charter, but RBD's interference caused AMNGR to demand (and forced North Offshore to agree to) an increased daily rate of hire. *Id.*

---

<sup>1</sup> The term "AHTS" before the ALDOMA's name refers to the vessel's functions and uses in the offshore oil industry, namely acting as an Anchor Handling, Tug and Supply vessel. Hoel Aff., ¶ 3.

The Bareboat Charter had a rider provision entitled "Profit Split" that addressed the payment of charter hire above a certain base rate provided in the Bareboat Charter. *Id.* ¶ 6 & Ex. 3. The "Profit Split" provision entitled AMNGR to additional compensation above the agreed base rate, which additional compensation would be 50% of the hire amounts earned by the ALDOMA on sub-charter above the agreed base rate. *Id.* This provision was designed to ensure that the Bareboat Charter would remain economically reasonable to AMNGR in a rising market for offshore supply vessels such as the ALDOMA. *Id.*

The Bareboat Charter included 2 one year options. *Id.* ¶ 5. AMNGR specifically reserved the right to withhold these option years unless North Offshore increased the daily charter hire to AMNGR in an amount that reflected the present rates in the market. Mnatsakanyan Aff., ¶ 4. In a "side agreement" dated May 12, 2005 (the same date as the Bareboat Charter), North Offshore and AMNGR specifically addressed the RBD Time Charter of the ALDOMA and provided that extensions of the RBD Time Charter would not be given "without the prior written consent of the Owner [AMNGR]." Hoel Aff., ¶ 7 & Ex. 4 *Id.* It also provided that AMNGR's written approval of North Offshore's new charter parties was required where AMNGR's profits would fall beneath US\$1,000 per day on its profit split with North Offshore. *Id.*

**B. RBD's Attempts to Re-Hire the ALDOMA**

RBD sought to charter the ALDOMA for additional time past May 2007 to apparently seek to use the ALDOMA for a five year time charter with a company named Oil & Natural Gas Corp ("ONGC"). *Id.* ¶ 8; Mnatsakanyan Aff., ¶ 10. North Offshore, because of the limitations imposed by its agreements with the ALDOMA's owner AMNGR, could not grant to RBD the extension of the Time Charter.

One of the limitations was that the ONGC tender required a five year charter term. Hoel Aff., ¶ 9; Mnatsakanyan Aff., ¶ 11. North Offshore could not offer RBD a five year term because it only had two one year options with AMNGR to extend the Bareboat Charter. Hoel Aff., ¶ 9. In other words, even if other impediments were not present, North Offshore did not have the rights to the ALDOMA for that entire time period to sub-charter the ALDOMA to RBD. Furthermore, as made clear by the affirmation of the Director General of the ALDOMA's owner AMNGR, AMNGR refused to agree to the charter term proposed by RBD and such a term also would have had to been approved by the Russian government:

The ONGC tender also required a five year charter term. *We would not agree to such a charter term* and, even if we were willing to agree, such a term also would have had to be approved by [the] Ministry of Natural Resources of [the] Russian Federation Federal Agency of Subsurface Use.

Mnatsakanyan Aff., ¶ 11 (emphasis added).

Another problem with the limitations imposed by the ALDOMA's owners was that AMNGR wanted to charter the ALDOMA for a substantially greater daily hire rate than proposed by RBD. *Id.* ¶¶ 8, 9 & Ex. 3. Because the Bareboat Charter contained a "profit split" provision regarding daily hire rates, AMNGR would be affected directly by the hire rate contained in North Offshore sub-charters. This is a reason why AMNGR maintained a right to refuse granting North Offshore the extension options under the Bareboat Charter. *See id.*

Nevertheless, RBD persisted in trying to charter the ALDOMA. Notwithstanding the existing charter between AMNGR and North Offshore, in November 2006 RBD's Norwegian lawyers contacted AMNGR's Norwegian lawyers to inquire regarding the terms of the ALDOMA's Bareboat Charter between AMNGR and North Offshore. Mnatsakanyan Aff., ¶ 5.

On January 8, 2007, AMNGR was contacted by RBD regarding "[h]ire of the offshore vessel MS Aldoma from AMNGR to Rolv Berg Drive when she is off-contract in April 2007."



*Id.* ¶ 6 & Ex. 2. On January 16, 2007, RBD's representatives met with AMNGR's representative in Murmansk, Russia seeking to hire the ALDOMA, in response to which AMNGR explained to the RBD representatives that the negotiations on the new contract for the ALDOMA would not commence until the expiration of the Bareboat Charter in 2009. *Id.* ¶ 7.

On January 29, 2007, AMNGR's Norwegian lawyers wrote to RBD's lawyers and made clear that AMNGR retained the right to refuse to grant North Offshore its option extensions unless North Offshore obtained a significant increase in the daily charter hire rate that RBD offered in the amount of US\$9,000. *Id.* ¶ 8 & Ex. 3. In that correspondence, AMNGR's lawyers specifically addressed the requirements that North Offshore would have to fulfill in order to qualify for the extension option under the Bareboat Charter:

Arktik [AMNGR] has concluded a C/P [charter party] with NO [North Offshore] for a period up to 5<sup>th</sup> May 2009, including two options on one year each. The C/P also include a right for Arktik 1) to refuse NO to extend existing agreements with sub-charterers [RBD] and 2) to refuse conclusion of new C/P or extension of C/P not giving Arktik a substantial increase in the charter hire (the sum of basic charter hire and part of profit split). ***NO will not receive such approval for a rate of USD 9.000 which is the rate in the conditional option included in the C/P between RBD and NO (we have recently received a copy of this C/P). The market rate is far above USD 9.000 and Arktik as owner is seeking arrangement giving the owner of the vessel a substantial part of the market rate.***

*Id.*, Ex. 3 (emphasis added).

The same correspondence from AMNGR's lawyers also responded to following inquiry from RBD: "[i]s there anything preventing RBD from exercising their option agreement with North [Offshore]?" In response, AMNGR's lawyers made clear that control of whether RBD could obtain their option period under the Time Charter was governed by whether the charter rates offered for the extension periods satisfied AMNGR's profit requirements:

***Arktik [AMNGR] has the right to refuse NO [North Offshore] to extend the relation with RBD without any reason and Arktik has an all over right to refuse sub-charterers not giving Arktik a certain amount in a profit split regime. Arktik has not evaluated whether RBD should be accepted or not, but want NO to conclude a sub-charter agreement on market terms entitling Arktik a profit split in the option periods.***

*Id.* (emphasis added).

Other problems also existed with RBD's asserted intention to use the ALDOMA for the ONGC tender. The ONGC invitation to tender contained requirements that the ALDOMA could not fulfill, including (a) the ALDOMA could not perform anchor handling at the depth required in the ONGC tender (1200 meters), (b) the ALDOMA does not have a chain locker capacity that met the requirements in the ONGC tender, and, perhaps most importantly, (c) the ALDOMA does not have a dynamic positioning system required under the ONGC tender which would allow the Vessel to precisely maintain station at one location. *Id.* ¶ 10; *see also* Hoel Aff., ¶ 8.

The ALDOMA's inability to perform anchor handling at the depth required in the ONGC tender (1200 meters) also was a significant requirement. Hoel Aff., ¶ 8. Earlier this year, in April 2007, the AHTS BOURBON DOLPHIN attempted to pull an anchor set at approximately 1100 meters, during which attempt the BOURBON DOLPHIN capsized and sank with a loss of over half her crew. *Id.* The BOURBON DOLPHIN was a larger vessel than the ALDOMA and had a greater bollard pull capacity, but nevertheless sank attempting to perform an operation required by the ONGC tender. *Id.* The AHTS ALDOMA – an "Anchor Handling Tug Supply" vessel – simply did not satisfy fundamental requirements anchor handling requirements of the ONGC tender. *Id.*

**C. The Disputes Between North Offshore and RBD**

During RBD's time charter of the ALDOMA, disputes arose between North Offshore and RBD. Hoel Aff., ¶ 10. North Offshore commenced an arbitration against RBD in Norway seeking crew costs and costs relating to crew changes arising from improper acts by RBD under the Time Charter. *Id.* On September 1, 2006, the Norwegian arbitration panel found in favor of North Offshore and awarded it damages for a variety of actions taken by RBD or costs incurred by North Offshore, including but not limited to (a) RBD's unilateral deduction of charter hire for unsupported crew costs, and (b) North Offshore's expenses related to the replacement of the ALDOMA's crew. *Id.* ¶ 11.

The Norwegian arbitration panel subsequently issued a second award on April 13, 2007 for additional claims made by North Offshore against RBD. *Id.* ¶ 12. North Offshore received additional damages for a variety of actions taken by RBD or costs incurred by North Offshore, including but not limited to (a) RBD's unilateral deduction of charter hire for an alleged off-hire event lasting 7.82 days which the panel held to be unjustified, (b) RBD's unilateral deduction of hire for maintenance days despite the time charter providing that such days were to count as on-hire periods, and (c) RBD's continued improperly-documented and deducted crew costs for the period between April and December 2006. *Id.*

Since the April 13, 2007 award, the Time Charter has expired. *Id.* ¶ 13. At the time of the expiration of the Time Charter and continuing to date, RBD has not paid the final hire payments for the ALDOMA, amounting to a total of US\$748,521.00. *Id.* In addition, the ALDOMA was not redelivered within the agreed redelivery range, and North Offshore incurred US\$154,190 in additional expenses (largely fuel costs) incurred as a result of this redelivery outside of the agreed redelivery range. *Id.* From these claims, North Offshore deducted the



amount of US\$100,641.10 credited to RBD for the fuel remaining aboard the ALDOMA at the time of its redelivery, resulting in a net total principal claim of US\$802,069.90. *Id.*

In connection with its claims of US\$802,069.90 against RBD, North Offshore requested that the same panel which issued the first two awards also decide these claims. *Id.* ¶ 14. In case the panel did not accept jurisdiction, North Offshore also appointed an arbitrator on May 16, 2007 to arbitrate these claims against RBD. *Id.* RBD did not appoint an arbitrator in response within the required time of 14 days. *Id.* Last week, the panel from the previous awards decided not to accept jurisdiction over the remaining claims, therefore the newly appointed arbitrator will have jurisdiction over North Offshore's claims of US\$802,069.90 against RBD. *Id.*

#### **D. North Offshore's Financial Capabilities**

As described in detail in the Hoel Affirmation, it would be impossible for North Offshore to comply with an order directing the posting of countersecurity in an amount of any significance. Hoel Aff., ¶ 15. North Offshore is not a large company. *Id.* ¶ 16. It is not publicly traded. *Id.* It has only one office and two business partners as company personnel. *Id.* It has a current bank account balance of approximately US\$0. *Id.*

As the accompanying current balance sheet attached to Mr. Hoel's affirmation shows, North Offshore has virtually no liquid assets by which it could post the countersecurity demanded by RBD's counterclaim. *Id.* ¶ 16. Ironically, one of the largest assets that North Offshore possesses is the outstanding hire and redelivery debts owed by RBD. *See id.* ¶ 21. If the choice were given to North Offshore whether to post countersecurity or surrender its security against RBD, North Offshore would be forced to agree to surrendering its security against RBD, not because that result is desirable, but because North Offshore's posting countersecurity on RBD's claim is financially impossible. *Id.* ¶ 24.

### ARGUMENT

RBD has not filed a supporting brief, but its Verified Answer and Counterclaim dated August 27, 2007, its letter to the Court of last week, and its correspondence with counsel for North Offshore of last week all indicate RBD's intention to request that this Court order North Offshore to post counter-security for RBD's counter-claims under Rule E(7)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure. *See* Affidavit of Michael J. Frevola dated October 1, 2007, ¶¶ 3-4 & Exs. 1 & 2.

The sum total of RBD's initial "application" is set forth in its Verified Answer and Counterclaim dated August 27, 2007:

7. RBD has a monetary claim in a sum as presently may be determined of at least \$14 million issuing from the wrongful refusal to renew the Charter.

8. RBD is also entitled to an award of interest and legal fees and costs in the Arbitration which it calculates as follows . . . TOTAL \$16,235,900.

9. RBD is therefore entitled to counter-security pursuant to Supplemental Rule E(7) in the sum of at least \$16,235,900.

\* \* \*

11. Under the terms of the Charter RBD had an option for an extension of the Charter upon its expiry, which it exercised.

12. RBD, in turn, entered into a new contract with its previous sub-charterer Oil & Natural Gas Corp. ("ONGC") in respect of which it intended to use the vessel under the extended Charter.

13. Plaintiff repudiated RBD's exercise of its renewal option and renewal of the Charter in breach of the Charter.

14. Plaintiff's breach caused RBD damages including but not limited to the difference between rates upon which RBD would have "Sub-let" the vessel under the renewed Charter to ONGC of \$7,400 per day over the five year back-to-back term or approximately \$13,505,000.

Verified Answer and Counterclaim dated August 27, 2007, at 7-9, 11-14.

The allegations cited above are the total extent of RBD's "application." There are no supporting affidavits or declarations. There is no supporting legal brief. Under well-settled procedure, RBD cannot buttress its application through submissions accompanying its reply papers, but only can rebut arguments made by North Offshore. *See, e.g., Thomas v. Roach*, 165 F.3d 137, 146 (2d Cir. 1999) (refusing to consider appellant's argument made for the first time in a reply brief because "[w]e need not consider this argument because it is raised for the first time in his reply brief.") (citing *Keefe on Behalf of Keefe v. Shalala*, 71 F.3d 1060, 1066 n.2 (2d Cir. 1995); *United States v. Gigante*, 39 F.3d 42, 50 n.2 (2d Cir. 1994)). The allegations set forth above fall well short of substantiating a valid request for countersecurity under Rule E(7)(a).

Rule E(7)(a) provides in relevant part:

When a person who has given security for damages in the original action asserts a counterclaim that arises from the same transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court for cause shown, directs otherwise.

Fed. R. Civ. P. Supp. R. E(7)(a).

While this rule's initial language makes it appear that the posting of countersecurity is mandatory whenever its conditions are satisfied, "the final clause of the quoted language makes clear that the trial court possesses broad discretion in deciding whether to order countersecurity under such conditions." *Result Shipping Co. v. Ferruzzi Trading USA Inc.*, 56 F.3d 394, 399 (2d Cir. 1995) (citing *Afram Lines Int'l, Inc. v. M/V CAPETAN YIANNIS*, 905 F.2d 347, 349 (11th Cir. 1990); *Titan Navigation, Inc. v. Timsco, Inc.*, 808 F.2d 400, 403 (5th Cir. 1987); 7A JAMES W. MOORE ET AL., MOORE'S FEDERAL PRACTICE ¶ E.15, at E-756 (2d ed. 1995)).

While the purpose of Rule E(7)(a) is to permit a counterclaimant to likewise receive security in appropriate instances, countersecurity under Rule E(7)(a) is not appropriate where a

defendant asserts a frivolous counterclaim. *See, e.g., Result Shipping*, 56 F.3d at 400; *see also Titan Navigation*, 808 F.2d at 404; *Trinidad Foundry & Fabricating, Ltd. v. M/V KAS CAMILLA*, 776 F. Supp. 1555, 1558 (S.D. Fla. 1991). The posting of countersecurity likewise is not appropriate where the plaintiff is financially unable to post countersecurity. *Result Shipping*, 56 F.3d at 400 (citing *Titan Navigation*, 808 F.2d at 403-05; also citing *Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat Co.*, 263 U.S. 629, 632-36 (1924)). In each case, the court is to use its discretion to determine, based on a totality of the circumstances, whether the posting of countersecurity should be ordered. *Result Shipping*, 56 F.3d at 400 (quoting *Titan Navigation*, 808 F.2d at 404; citing *Afram Lines*, 905 F.2d at 349-50).

As shown by the supporting affirmations and documents and discussed below, RBD's countersecurity application should be denied because RBD's "counterclaim" does not qualify as arising from the same transaction and occurrence. This prerequisite must be satisfied before any countersecurity application can be considered on its merits.

RBD's application also should be denied because its "counterclaim" is a manufactured artifice designed to place North Offshore in the very position warned against in numerous decisions. Where a plaintiff must choose between maintaining its security against the defendant at an untenable cost or having to surrender a right to what it otherwise would be entitled, courts routinely have refused to grant a defendant's countersecurity request. Here, in light of the baseless nature of RBD's claims, the leverage that RBD seeks to impose upon North Offshore to vacate North Offshore's attachment, and the minimal financial capabilities of North Offshore, it is respectfully submitted that the totality of the circumstances weighs heavily in North Offshore's favor and RBD's motion for countersecurity should be denied.



**POINT I**

**COUNTERSECURITY IS NOT WARRANTED BECAUSE RBD'S  
COUNTERCLAIM DOES NOT ARISE OUT OF THE SAME  
TRANSACTION OR OCCURRENCE AS THE CLAIMS OF NORTH  
OFFSHORE AND, THUS, IS NOT A COMPULSORY COUNTERCLAIM**

Supplemental Rule E(7) is identical to Rule 13(a) of the Federal Rules of Civil Procedure in that it only permits countersecurity for counterclaims that are compulsory. *Sea-Terminals, Inc. v. Independent Container Lines*, 89 Civ. 6931 (MBM), 1990 U.S. Dist. LEXIS 11561, \*5 (S.D.N.Y. Sept. 4, 1990). Accordingly, when determining whether a counterclaim arises "out of the same transaction or occurrence" under Rule E(7), courts will apply the test for compulsory counterclaims under Rule 13(a). *See Incas & Monterey Printing & Packaging, Ltd. v. M/V SANG JIN*, 747 F.2d 958, 964-65 (5th Cir. 1984), *cert. denied sub nom Van Weelde Brother Shipping Ltd. v. I.N.C.A.S.*, 471 U.S. 1117 (1985); *Solomon v. Bruchhausen*, 305 F.2d 941 (2d Cir. 1962), *cert. denied sub nom Isbrandtsen v. Maximo*, 371 U.S. 951 (1963); *Seaplus Line Co. v. Bulkhandling Handymax AS*, 409 F. Supp. 2d 316, 324 (S.D.N.Y. 2005) (stating that "counterclaims falling within the purview of Supplemental Rule E(7) are akin to compulsory counterclaims under Rule 13(a)", *overruled on other grounds by Aqua Stoli Shipping Ltd. v. Gardner Smith Party Ltd.*, 460 F.3d 434, 445 (2d Cir. 2006).

RBD's purported counterclaim does not arise from the "same transaction or occurrence" as the claims of North Offshore. Hence, it is not a mandatory counterclaim entitled to countersecurity under Supplemental Rule E(7). RBD's counterclaim is based on a "side-agreement," that is a completely separate agreement from the Time Charter between North Offshore and RBD. Whereas the side agreement is dated March 5, 2004, the Time Charter is dated February 16, 2004. The Time Charter sets forth the rights and obligations of the parties with respect to the charter of the ALDOMA. The side agreement, if it is an enforceable

agreement at all, merely provides for a future and highly speculative "option" (i.e. "*should* Rolv Berg AS be granted extension. . .") to be exercised by RBD under certain specified and limited circumstances. *See* Hoel Aff., Ex. 2.

The side agreement itself states that an extension of time might be granted to "this contract *or new contracts*." *Id.* As is stated in the side agreement, "this contract" refers to "the 3 year contract with contract no. MR/MM/OFF.LGTS/CH/VESSELS//10(109)/2003" *between ONGC and RBD* – not the *Time Charter between North Offshore and RBD*. The fact that the side agreement refers to the ONGC contract is not surprising, because the Time Charter does contain its own extension option. That option, however, is set forth at Clause 10 on the cover page of the Time Charter and *allows a mere 15 days extension*. Hoel Aff., Ex. 1, Part I, Clause 10 (first page). Not only does the Time Charter contain its own extension provision, but also Part II, Clause 32 of the Time Charter contains a merger clause stating that the Time Charter constitutes "the entire agreement of the parties." *Id.*, Part II, Clause 32 (last page).

The Time Charter and the side agreement are clearly two separate contracts, hence two separate transactions. Therefore, RBD's counterclaim is not compulsory even under the liberal standard applied by numerous whereby counterclaims arising out of the same contract as the plaintiff's claim are found to be compulsory. *See, e.g., Hercules Inc. v. Dynamic Export Corp.*, 71 F.R.D. 101, 109 n.10 (S.D.N.Y. 1976) (collecting cases). Indeed, RBD's counterclaim fails to satisfy any of the standards suggested by most courts when considering the compulsory or permissive nature of specific counterclaims, which are as follows:

- (1) Are the issues of fact or law raised by the claim and counterclaim largely the same?;
- (2) Will substantially the same evidence support or refute plaintiff's claim as well as defendant's counterclaim?;
- (3) Is there any logical relation between the claim and counterclaim?; and
- (4) Would *res judicata* bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?

*Id.* (citing *Pipeliners Local Union No. 798 v. Ellerd*, 503 F.2d 1193, 1198-99 (10th Cir. 1974); 6 WRIGHT & MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL § 1410, at 42 (1971)). While the logical relation test is the most consistently applied standard, *id.*, RBD's counterclaim is permissive under any of the above standards.

Looking at the first two inquiries, RBD's counterclaim (for a breach of a purported charter extension) does not involve any issues of fact or law raised by North Offshore's claims, which involve non-payment of hire for the use of the ALDOMA and expenses associated with a failure to redeliver the ALDOMA within the agreed redelivery range. Nor will there be an overlap of evidence, let alone a substantial overlap. (In contrast, a counterclaim for overpayment of hire, for example, *would* qualify as compulsory).

Turning to the third inquiry, under the logical relation test applied in the Second Circuit and elsewhere, a court "must analyze whether the essential facts of the various claims are so logically connected that considerations of judicial economy and fairness dictate that all the issue be resolved in one lawsuit." *Reeve v. Am. Broad. Cos., Inc.*, 580 F. Supp. 84, 88 (S.D.N.Y.), *aff'd*, 719 F.2d 602 (2d Cir. 1983) (citation omitted). Even though the charter party and the side-agreement are related in that the side-agreement arose out of a relationship created by the charter party, a claim for a speculative loss of profits due to a failed business option is not so logically



related to a claim for breach of a charter party and failure to pay charter hire as to be deemed compulsory. *See Hercules*, 71 F.R.D. at 109.

Under the fourth inquiry, RBD's counterclaim also fails because RBD would not be barred by *res judicata* from bringing its counterclaim in a subsequent suit in the absence of the compulsory counterclaim rule.

Accordingly, because RBD's counterclaim is not compulsory under *any* standard, its motion for countersecurity should be denied because RBD's claim fails to qualify under Rule E(7)(a).

## **POINT II**

### **COUNTERSECURITY IS NOT WARRANTED BECAUSE RBD'S CLAIM IS FRIVOLOUS AND DESIGNED TO LEVERAGE NORTH OFFSHORE INTO SURRENDERING ITS SECURITY**

Rule E(7)(a) should not be permitted to be employed like a bludgeon to eliminate the possibility of security for well-founded claims through the granting of countersecurity on a defendant's dubious counterclaims:

[T]he court should not require countersecurity where the counterclaim is frivolous or so lacking in merit that the court can only conclude that the counterclaim was advanced solely to secure a negotiating advantage over the complainant.

*Titan Navigation*, 808 F.2d at 404. Accordingly, courts in a variety of circumstances have refused to order the posting of countersecurity where a counterclaim is frivolous, lacking in merit, or too speculative to be entitled to the normal presumption that countersecurity is appropriate. Several representative examples, discussed below, demonstrate how courts have addressed this issue.

In *Ythan Ltd. v. Americas Bulk Transport Ltd.*, 336 F. Supp. 2d 305 (S.D.N.Y. 2004), the defendant sought \$4.4 million in countersecurity on a cargo indemnity claim. *Id.* at 309. In

denying that portion of the defendant's countersecurity request, the court ruled that the "highly contingent" nature of the defendant's claim made posting of such countersecurity inappropriate:

I decline to require security on the cargo indemnity claim (\$4,400,000) because the claim is highly contingent and Ythan has already posted security for claims brought directly by the cargo owners against it. *The fact that a claim against Americas Bulk by the cargo owners for which Americas Bulk may seek to hold Ythan liable may not be entirely foreclosed does not mean that there is a serious prospect of such liability.*

*Id.* at 309 (emphasis added).

In *Trinidad Foundry & Fabricating, Ltd. v. M/V KAS CAMILLA*, 776 F. Supp. 1555 (S.D. Fla. 1991), the plaintiff arrested the defendant vessel in connection with its claims for repairs and necessities. *Id.* at 1556. The defendant shipowner counterclaimed for damage to the vessel due to the plaintiff's negligence, breach of warranty, and breach of contract and applied to the court for countersecurity under Rule E(7). *Id.* at 1558. In its application, the defendant contended that the plain language of Rule E(7) required the plaintiff to post countersecurity. *Id.* The court disagreed and, after examining the facts surrounding defendant's purported "counterclaim," refused to order the posting of countersecurity:

[Defendant] argues that the plain language of Rule E(7) requires Plaintiff to post a bond or other security on the Counterclaims filed in this action. The Court is not persuaded by Defendant's reasoning in this regard. Rule E(7) mandates the posting of countersecurity in the instant unless the Court, for cause shown, directs otherwise. In the present case, *Defendants' authorized representative executed Plaintiff's Notice of Repairs Satisfactorily Completed, confirming that the repairs performed by Plaintiff to the Vessel had been satisfactorily completed. The Undersigned believes that this fact alone indicates that Defendants' Counterclaims may be frivolous, and constitutes sufficient cause shown to remove the presumption of countersecurity dictated by Rule E(7).* The Court would like to note parenthetically that this preliminary determination of the nature of Defendants' Counterclaims is germane only to the instant determination of the posting of countersecurity. It in no way speaks to the merits of Defendants' Counterclaims and has no *res judicata* or collateral estoppel effect.

*Id.* (emphasis added).

In *Expert Diesel, Inc. v. Yacht FISHIN FOOL*, 627 F. Supp. 432 (S.D. Fla. 1986), the court refused to grant the defendants' request for countersecurity on counterclaims similar to those asserted by the defendant in *KAS CAMILLA*. *See id.* In so holding, it stated that "the court is reluctant to compel Plaintiff to post a bond in light of Defendants' damage claims of a general, rather than a precisely detailed, nature." *Id.* at 433.

In *U.S. Maritime Services, Inc. v. Trade Ventures, Inc.*, No. CIV. A. 98-0499, 1998 WL 388669 (E.D. La. July 8, 1998), the defendants counterclaimed (similar to RBD here) for damages arising out of an alleged lost charter party. *Id.* at \*2. In denying the defendants' motion for countersecurity, the court ruled that the counterclaim was too speculative and insufficiently supported to justify an order directing the posting of countersecurity:

the defendants' claim for the alleged lost charter is too speculative to sustain an order for countersecurity. *Unlike plaintiff's claim which is based on past events reasonably able to be ascertained and quantified, defendants' losses due to a 'road not taken' cannot be so readily ascertained and quantified. The Baldwin affidavit is insufficient by itself to determine what the defendants estimated actual loss is after expenses and other items are deducted, even assuming the voyage would have occurred but for the plaintiff's alleged broken agreement.*

*Id.* (emphasis added).

Here, RBD has offered even less substance than the defendants in the cases cited above. RBD summarily contends that it has claims for over \$16 million, but it does not produce any contracts, any witness statements, or any other proof that such a claim has any basis in reality. As the cases cited above make clear, general claims or unsupported allegations are not given a presumption of validity that a well-supported and documented claim is to receive.

The reasoning of the *U.S. Maritime Services* court, quoted in the preceding paragraph, appears especially appropriate in this case. Like the plaintiff in that case, North Offshore's claim

here is based on RBD's use of the ALDOMA for a specified period of time and RBD's failure to redeliver that vessel within the agreed redelivery range. North Offshore's claims all are based on events that already have occurred and consideration already rendered.

In contrast, just like the defendant's claim in *U.S. Maritime Services*, here RBD seeks security for claims looking five years into the future on the speculation of a charter on which it might have been able to employ the ALDOMA, *and assuming the following facts which have been refuted by North Offshore's submissions*:

- (1) ALDOMA's registered owner would have agreed to the enterprise for the alleged price (which it clearly would not from paragraphs 8 and 9 and Exhibit 3 of the accompanying Mnatsakanyan Affirmation);
- (2) ALDOMA's registered owner would have agreed to the chartering of its vessel for five years (which it clearly would not from paragraph 11 of the accompanying Mnatsakanyan Affirmation);
- (3) The Russian government would have agreed to the proposed time charter (which is unknown); and
- (4) ALDOMA would have qualified for the ONGC tender (which it would not have because it lacked critical characteristics requested in the tender as discussed in paragraph 10 of the accompanying Mnatsakanyan Affirmation and paragraph 8 of the accompanying Hoel Affirmation).

Just like the defendants in *U.S. Maritime Services*, RBD's "claim for the alleged lost charter is too speculative to sustain an order for countersecurity. . . .[D]efendants' losses due to a 'road not taken' cannot be so readily ascertained and quantified." *Id.* In *U.S. Maritime Services*, the defendants' countersecurity application was denied even though the defendants submitted an



affidavit supporting their counterclaim. Here, RBD has not even submitted that minimal level of support. Accordingly, even assuming that RBD's claims are considered as falling within the same transaction and occurrence thus making a countersecurity application facially proper, RBD's claim is too unsupported and too speculative to warrant an order directing the posting of countersecurity.

### POINT III

#### COUNTERSECURITY IS NOT WARRANTED BECAUSE NORTH OFFSHORE IS FINANCIALLY UNABLE TO POST SECURITY

Generally, "when a party is financially unable to post countersecurity, courts often dispense with the requirement of [Rule E(7)(a)]." *Titan Navigation*, 808 F.2d at 403 (citing cases); *accord Result Shipping*, 56 F.3d at 400 (Rule E(7) "is not intended to impose burdensome costs on a plaintiff that might prevent it from bringing suit"); *Afram Lines*, 905 F.2d at 350.

For example, in *Boland Marine & Manufacturing Co. v. M/V BRIGHT FIELD*, No. CIV. A. 97-3097, 1999 WL 172940 (E.D. La. Mar. 26, 1999), the district court held that the defendant had satisfied the elements of Rule E(7). *Id.* at \*1. Nevertheless, in reviewing the position of the parties, the court refused to grant the countersecurity application despite prerequisites met where "the requested amount would leave plaintiffs at a distinct disadvantage by tying up a large portion of its resources." *Id.*

The Hoel Affirmation and the financial statement attached to that affirmation show that North Offshore similarly is a small entity without resources sufficient to post countersecurity, especially in the magnitude sought by RBD. Hoel Aff., ¶¶ 15-16, 24. Furthermore, a significant reason for North Offshore's lack of liquidity is because it has had to pay charter hire to AMNGR for the ALDOMA where it has not been paid in turn by RBD. *See id.* ¶ 21.

Under the well-settled precedent discussed in this section and the previous section, the Rule E(7)(a) inquiry is to be driven by principles of equity and fairness. Here, not only is North Offshore financially unable to post countersecurity, but that inability to post security has been caused by the very party now seeking to use the countersecurity rule to deprive North Offshore of its right to use a maritime attachment to secure its claim. This result is precisely the type that the drafters of Rule E(7)(a) contemplating in leaving in the "for cause" exception to the automatic provision of countersecurity, and thus leaving it within the Court's power to deny countersecurity where the equities favor such a denial. See, e.g., *Washington-Southern Nav. Co. v. Baltimore & Philadelphia Steamboat Co.*, 263 U.S. 629, 631-39 (1924) (discussing predecessor to Rule E(7) under old Admiralty Rules and holding that an automatic granting of countersecurity without consideration of the circumstances was not the intention of the rule).

### CONCLUSION

Because RBD's claim is not based on the same transaction and occurrence, because RBD's claim is frivolous, general, speculative and/or clearly lacking in merit, and because North Offshore is incapable of posting the requested countersecurity because of RBD's own actions, this Court should deny RBD's motion for countersecurity in its entirety.

Dated: New York, New York  
October 1, 2007

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**EXHIBIT B**  
**TO THE AFFIDAVIT OF JEREMY J.O. HARWOOD**  
**DATED DECEMBER 21, 2007**



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NORTH OFFSHORE A.S.,

Plaintiff

-vs-

ROLV BERG DRIVE A.S.,

Defendant  
-----X

DOCKET NO.: CV-07-3095 (SHS)  
New York, New York  
October 3, 2007

TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE

BEFORE THE HONORABLE SIDNEY H. STEIN  
UNITED STATES DISTRICT JUDGE

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1 THE CLERK: North Offshore versus Rolv, zero seven  
2 civil three zero nine five.

3 Counsel, please state your names.

4 MR. FREVOLA: Good afternoon, Your Honor. Michael  
5 Frevola, from Holland & Knight, for plaintiff North Offshore.  
6 My colleague, Lissa Schaupp, I think stepped out to get a  
7 tissue. In the event this runs till just before four o'clock,  
8 she may have to step out to go see Judge Scheindlin on  
9 something. Hopefully it won't be that long.

10 THE COURT: No, I don't think it will be.

11 MR. FREVOLA: Thank you, Your Honor.

12 MR. HARWOOD: Good afternoon, Your Honor. Jeremy  
13 Harwood, Blank Rome, for the defendant and counter-claimant,  
14 Rolv Berg Drive A.S.

15 THE COURT: All right.

16 Good afternoon. Please speak loudly and clearly,  
17 because we're taping this, so the microphones will pick it up.

18 Let me start off with a -- I think a partial mea  
19 culpa. The reason I brought this hearing on so quickly is  
20 probably due to a misapprehension by me. Specifically, I  
21 received the letter from Mr. Harwood dated September 26th in  
22 which he says:

23 The purpose of this letter is to request the  
24 expedited hearing contemplated under Local Rule E.1  
25 in respect of vacating the attachment and/or

1 provision of Rule E counter security in respect  
2 thereto.

3 Now, I admit I have no idea what the phrase 'and/or provision  
4 of Rule E counter security in respect thereto' means, but I do  
5 know what this means: The purpose of this letter is to request  
6 the expedited hearing contemplated under Local Rule E.1 in  
7 respect of vacating the attachment.

8 Now, E.1 -- Local Admiralty Rule E.1, entitled  
9 Adversary Hearing Following Arrest, Attachment, or Garnishment,  
10 reads as follows:

11 The adversary hearing following arrest, or  
12 attachment, or garnishment that is called for in  
13 Supplemental Rule E(4)(f) shall be conducted by a  
14 judicial officer within three court days unless  
15 otherwise ordered.

16 So I assumed what Mr. Harwood was requesting was an immediate  
17 hearing within three court days to vacate an attachment. And  
18 again, the reason I say that is because that's what the letter  
19 said. So I set it down for an immediate hearing.

20 What do I then find but that the plaintiff submits --  
21 obviously, you must have been working day and night for that  
22 short period of time -- submits several affidavits from Russia  
23 and everywhere else -- the owner of the ship, and I had the  
24 sense that everybody was working around the clock, saying why  
25 the counter security should not be granted, and they are asking

1 in correspondence well, where's the briefing schedule on this.

2           The reason there was no briefing schedule was the  
3 rule quite properly states that when somebody's obtained an ex  
4 parte attachment, the side that wasn't able to be heard before  
5 -- wasn't heard because the attachment is issued always on an  
6 ex parte basis, in my experience -- can come in and get a  
7 prompt hearing so that they can be heard. I thought that's  
8 what we were doing.

9           I see that's what we're not doing, and it looks like  
10 what I inadvertently did, then, was move up very quickly what  
11 simply was a request for counter security in an answer and  
12 counterclaim. So be it. We now are here.

13           I have received that submission of North Offshore,  
14 and about ten minutes ago I was able to read the reply by Mr.  
15 Harwood. Some of the facts are a little unclear to me. Let me  
16 tell you what my understanding of the facts is, and then the  
17 parties can correct my understanding of the facts. And once I  
18 understand the facts, we then will see where we stand in this  
19 litigation. Again, I think I prematurely have expedited  
20 things.

21           As I understand what's happened to date, it is as  
22 follows. North Offshore and Rolv Berg Drive, who I'll call  
23 RBD, entered into a time charter on February 16th, 2004 for  
24 three years. Fairly straightforward. And it was for RBD to  
25 use a ship, the Aldoma, which was owned by a Murmansk

1 corporation, or a Russian corporation headquartered in  
2 Murmansk, that will go by the nemonic of AMNGR.

3 Some disputes arose in the course of that, which is  
4 not unusual. And there was an arbitration started -- again,  
5 not unusual. And there were two arbitration awards issued in  
6 that arbitration, both in favor of North Offshore, one in  
7 September of oh-six, September 1st oh-six, and the second one  
8 on April 13th of oh-seven.

9 After those awards were issued, North Offshore  
10 brought this action here in the Southern District of New York,  
11 and in connection with that action I believe I signed an ex  
12 parte attachment order. And North Offshore found monies -- I  
13 think about four hundred thousand dollars, right? -- which it  
14 has attached.

15 And when these requests for security in the form of  
16 attachment are made, it's a fairly simple showing that has to  
17 be made, including the fact that the defendant isn't in this  
18 district and can't be found here, and the complaint has been  
19 started. So I granted that request for the attachment.

20 I take it the -- both of the arbitration awards have  
21 now been paid, is that correct, plaintiff?

22 MR. FREVOLA: Your Honor, that's my understanding.  
23 Yes, Your Honor.

24 THE COURT: All right.

25 But what's been happening? What's been happening is



1 the time charter expired, but before it expired, there were  
2 further disputes not covered by the two arbitration awards,  
3 again having to do with the charges between North Offshore and  
4 RBD.

5 And apparently, at least allegedly, RBD didn't return  
6 the Aldoma to North Offshore when it was supposed to pursuant  
7 to the February 16, 2004 time charter.

8 North Offshore says that it is owed now about eight  
9 hundred thousand dollars, and it made -- it did two things. It  
10 went to the arbitrators and said include this in your  
11 arbitration, and to protect itself it also apparently filed a  
12 demand for arbitration under the AAA rules.

13 In the legal memorandum submitted in opposition to  
14 the request for counter security, North Offshore says last week  
15 that that arbitration -- the arbitrators said they weren't  
16 going to take this under advisement, and therefore North  
17 Offshore, I take it, is planning on proceeding with the  
18 arbitration that it's demanded.

19 Is that correct, plaintiff?

20 MR. FREVOLA: Yes, Your Honor, and for clarity of the  
21 record, the only thing that I see so far was that when you  
22 mentioned the claim for re-delivery, Your Honor --

23 THE COURT: Yes.

24 MR. FREVOLA: -- that is not a temporal disparity.  
25 It is a geographic --

1 THE COURT: Okay, fine.

2 MR. FREVOLA: -- in that the vessel was sent to a  
3 port which -- the charter has a range of places to redeliver  
4 the vessel, and the allegation is that it was delivered to a  
5 port away from there, and it cost money to get it back into  
6 that --

7 THE COURT: All right. I'm just trying to get it  
8 conceptually, but by for that clarification.

9 So that's where we stood. What happened next is RBD  
10 files an answer and a counterclaim.

11 Mr. Harwood, what is the security -- how much is the  
12 security you're seeking? It's a little unclear to me whether  
13 it was for six hundred thousand, or thirteen million, or about  
14 one million, one hundred thousand. Do you know -- what is the  
15 amount of security you're seeking? In your paper today, you  
16 say one million, one hundred and ninety-six thousand, nine  
17 hundred dollars.

18 MR. HARWOOD: Your Honor, Jeremy Harwood, for the  
19 record. Thank you, Your Honor. It is as -- and I apologize  
20 that I couldn't file that brief earlier than today, but --

21 THE COURT: Well, I set it down for a hearing  
22 immediately, thinking I was doing the correct thing. Go ahead.

23 MR. HARWOOD: If I may, I will get to that later. I  
24 wasn't --

25 THE COURT: Well, no, I don't -- I'm just trying to

1 --

2 MR. HARWOOD: Yeah, it's a million --

3 THE COURT: -- make sure that I understand what's  
4 been happening, and we'll have a full ability for everybody to  
5 argue, and we'll be out of here before four o'clock, I hope.  
6 So answer my question, if you can.

7 MR. HARWOOD: I can, Your Honor.

8 THE COURT: What is the sum sought to be attached  
9 pursuant to your request for counter security?

10 MR. HARWOOD: It is limited to the cumulative amount  
11 that the plaintiff has sought to attach, which is, I think, one  
12 point one million, as stated in our opposition -- or, rather,  
13 reply brief, and it's stated in the conclusion of that brief,  
14 Your Honor.

15 The reason is that the case law in this circuit and,  
16 indeed, in a case that I had before Judge Leisure which hasn't  
17 been reported, I said -- or I argued that a Rule E counter-  
18 claimant should be entitled to security for the full amount of  
19 its claim, but the --

20 THE COURT: Which is thirteen million?

21 MR. HARWOOD: Which is that -- yes, Your Honor.

22 THE COURT: All right.

23 MR. HARWOOD: But the case law in this circuit is  
24 that the rule -- under Rule E you are -- the counter-claimant  
25 can't get more security than the original Rule B plaintiffs

1 sought to attach in its --

2 THE COURT: And that's one point one?

3 MR. HARWOOD: That's -- that's right, Your Honor.

4 THE COURT: I now understand that. Thank you. All  
5 right.

6 So I think I understand the events so far. Now, in  
7 terms of this application itself, as I understand the dispute,  
8 it is as follows.

9 The defendant says I am entitled to one point one  
10 million dollars because I should have gotten the ship to use  
11 pursuant to an agreement dated March 5th, 2004, which permitted  
12 me, they say, to be able to, I take it, extend the bareboat  
13 charter, and because we couldn't get the use of the ship, we've  
14 been damaged to the tune of thirteen million dollars. That's  
15 what the counter -- that's what the counterclaim is in this  
16 action.

17 And the reason they're seeking attachment on the  
18 counterclaim up to, as Mr. Harwood states, the amount of the  
19 original security sought in the underlying action, is pursuant  
20 to Rule E of the supplementary rules entitled Security on  
21 Counterclaim.

22 That provision states when a person who has given  
23 security or damages in the original action -- that's RBD,  
24 because about several hundred thousand dollars has been  
25 attached -- asserts a counterclaim that arises from the same

1 transaction or occurrence that is the subject of the original  
2 action, a plaintiff for whose benefit the security has been  
3 given must give security for damages demanded in the  
4 counterclaim, unless the court for cause shown directs  
5 otherwise.

6           So we have a couple of requirements. First of all,  
7 RBD has filed a counterclaim. Secondly, they're seeking  
8 security. Thirdly, North Offshore has given security. And the  
9 requirement is that it has to be a counterclaim that arises  
10 from the transaction or occurrence that is the subject of the  
11 original action.

12           According to the face of this, it's mandatory -- must  
13 give security -- although I have the discretion to determine  
14 that for cause shown, I take it, security does not have to be  
15 given or the amount can be reduced. That's the statutory  
16 framework.

17           North Offshore says, first of all, this doesn't arise  
18 from the same transaction or occurrence, the original suit is  
19 on the February 16, 2004 time charter, and this counterclaim  
20 has to do with the March 5, oh-four contract providing for an  
21 option to extend the use of the Aldoma. That's point one.

22           Point two is the counterclaim is completely  
23 meritless, it's clear that that -- RBD's rights to extend the  
24 Aldoma's charter were subject to North Offshore securing a  
25 further charter with AMNGR, and indeed, that agreement



1 specifically says -- it's attached to somebody's papers --  
2 Exhibit B to one of the North Offshore affidavits -- says this  
3 agreement shall be subject only to TFDS Offshore securing  
4 further charter with the vessel's owner, and so there's a  
5 contingency in there, and they weren't able to extend the  
6 charter with AMNGR, the vessel's owner. So they say right on  
7 its face the contingency -- contractual contingency hasn't  
8 occurred.

9           And last, they say -- or not last; next, they say  
10 we're a poor company and we can't pay for it, and the only way  
11 we could pay for it is to release the security we already have,  
12 and then they say ah-ha, that's exactly what RBD is trying to  
13 do here, there's no merit to its counterclaim, all it's trying  
14 to do is to get us to release the security, and that's not  
15 cricket, is what they say.

16           Today's reply by RBD says pish tosh, all I have to do  
17 is assert a prima facie claim, and they cite a Judge Wood case  
18 and there's also a Judge Preska case in the original papers,  
19 and so all I have to do is show that North Offshore is not in  
20 this district -- by the way, North Offshore, is that true, that  
21 you're not in this district? I was wondering whether for  
22 purposes of the underlying action you now are in this district.  
23 But do you have a position on that?

24           MR. FREVOLA: Your Honor, I have not actually asked  
25 the client. I believe it's almost certain that they are not

1 present here.

2 THE COURT: Okay.

3 MR. FREVOLA: I -- I -- Your Honor is raising --

4 THE COURT: Okay. I understand. Nobody's -- I'm not  
5 locking in -- anybody into it. I'm trying to see what the lay  
6 of the land is.

7 So RBD says all I have to do is state a prima facie  
8 claim that is the same prima facie claim as if I was the --  
9 just suing and seeking security. And they say the -- North  
10 Offshore's inability to pay is irrelevant.

11 Right, Mr. Harwood? Don't you -- you take that  
12 position?

13 MR. HARWOOD: Absolutely, correct.

14 THE COURT: Okay.

15 And then they also say the merits are not what's at  
16 issue now and go back to those cases that say security is  
17 issued upon a simple prima facie showing, and we've made the  
18 prima facie showing. And they also say by the way, it is the  
19 same transaction or occurrence, because it deals with the  
20 Aldoma, it's all the same ball of wax.

21 That's how I see the claims of the -- the positions  
22 of the parties. Have I misstated anything or left out anything  
23 of importance, not the details?

24 Plaintiff?

25 MR. FREVOLA: No, Your Honor.

1 THE COURT: All right.

2 Mr. Harwood?

3 MR. HARWOOD: No, that's fine, Your Honor.

4 THE COURT: Okay.

5 So where do we go from here?

6 Plaintiff, one of defendant's positions is if I deny  
7 security here, all they then do is start another suit where,  
8 clearly, Mr. Harwood's right that all you have to do is state a  
9 prima facie case to get an attachment. So aren't we then all  
10 back in the soup?

11 MR. FREVOLA: Your Honor, yes and no. There's a  
12 large contingent possibility there, Your Honor, and that  
13 possibility is reflected by the rules. In the Titan Navigation  
14 case that we cite, in the Fifth Circuit, the -- in deciding  
15 that decision -- may I approach, Your Honor?

16 THE COURT: Yes.

17 MR. FREVOLA: I have a copy for counsel here. Titan  
18 Navigation was decided by the Fifth Circuit in January of 1987,  
19 and there's an important lead-in in terms of dealing with the  
20 court's jurisdiction that is on page three of the copy of the  
21 decision I gave to you, Your Honor. It's located on page four  
22 oh two of the decision, the official reporter. The cite for  
23 the case is 808 F. 2d 400. This is on page four oh two.

24 And it's the first paragraph on the left-hand column,  
25 first full paragraph, and -- addresses this very issue, Your

1 Honor, and that is that a Rule E(7) counterclaim does not have  
2 to be subject to admiralty jurisdiction in order to get the  
3 counter security. And citing Judge Friendly in Leathers Best,  
4 it talks about this issue.

5 In other words, unlike a Rule B claimant coming in  
6 and alleging that it's a maritime claim and they're entitled to  
7 security, here is a counter security claim. They don't have to  
8 prove that.

9 And, Your Honor, in terms of this separate agreement,  
10 first of all, I --

11 THE COURT: But wait, doesn't that help Mr. Harwood?  
12 You're saying if he comes in with counter security, he doesn't  
13 have to prove that there's admiralty jurisdiction.

14 MR. FREVOLA: Well, Your Honor, we're the plaintiff,  
15 so --

16 THE COURT: Yes?

17 MR. FREVOLA: -- we've got -- we've proven our -- I  
18 think we've proven our maritime claim and that it's a charter  
19 party.

20 THE COURT: Right.

21 MR. FREVOLA: This other agreement is an option dated  
22 a different date. In terms of the consideration given --

23 THE COURT: Oh, is this your point, that there's no  
24 maritime jurisdiction under his counterclaim and therefore Rule  
25 E doesn't apply, the supplemental rules don't apply?

1 MR. FREVOLA: If this had been briefed on a normal  
2 briefing schedule where they put in their position first, and  
3 we could respond, and I had seen this, Your Honor --

4 THE COURT: Well, I did see Mr. Harwood's e-mail  
5 which you gave to me, although there was no intention of the  
6 parties that the Court see it, and he did say no, you go first,  
7 but go ahead.

8 MR. FREVOLA: But all I'm saying is that I did -- I  
9 couldn't answer this position in terms of being able to file  
10 for Rule B anyway because I had not seen that position ahead of  
11 time. All I'm saying here, Your Honor, is, first of all, the  
12 side agreement is a separate document from the charter. This  
13 could be -- this could very well fall into the preliminary  
14 contract exception to maritime jurisdiction, which says that --

15 THE COURT: Well, you're not even arguing that as  
16 your primary point. Your primary point is that it's a simple,  
17 non-maritime option contract. Maybe that is the same point; I  
18 don't know.

19 MR. FREVOLA: Actually, it isn't, Your Honor. If  
20 it's a maritime contract and they're unrelated, then counter  
21 security shouldn't be awarded. And then he has a right to  
22 commence his Rule B.

23 THE COURT: Right.

24 MR. FREVOLA: I'm saying there's a step further here  
25 in that he may not be able to sustain his burden of showing



1 it's a maritime claim if he goes to that Rule B. So the kind  
2 of summary assertion that I could get this if this was a Rule B  
3 myself --

4 THE COURT: Right.

5 MR. FREVOLA: -- puts the cart before the horse, Your  
6 Honor.

7 THE COURT: I understand the point. What do you do  
8 to his statement that this is the same -- arises out of the  
9 same occurrence or transaction? Do you simply say well, it's  
10 clearly not, it's two different contracts?

11 MR. FREVOLA: Well, the -- the tests that are given,  
12 Your Honor, for looking at whether it falls into the same thing  
13 is like a Rule 13(a) compulsory counterclaim. The facts that  
14 we're dealing with on both claims are -- I think counsel would  
15 agree there are no related facts. One goes to the issue of the  
16 vessel's use and payment not being made for it. The other goes  
17 to whether or not there was a procurement of a second contract.

18 And those are not related facts. They're not related  
19 occurrences. And there very well may not be any related law in  
20 terms of the issues either. I think that the one way that this  
21 perhaps survives those defects is what's known as the logical  
22 relationship test, which tends to hump together or lump  
23 together claims brought under the same contract.

24 The problem is, Your Honor, this is not a clause to  
25 the charter part.

1 THE COURT: Right. It's a separate contract.

2 MR. FREVOLA: It's a separate agreement.

3 THE COURT: Okay.

4 MR. FREVOLA: And that's why I think you have a  
5 problem, because even a logical relationship argument, Your  
6 Honor, falls astray here, because they're not the same  
7 contract.

8 THE COURT: All right. I understand. All right.

9 Mr. Harwood, what Mr. Frevola's saying is that you  
10 don't get counter security because it has to arise from the  
11 transaction or occurrence that is the subject of the original  
12 action. I think that's where he's putting a lot of his eggs.  
13 So what's your response?

14 MR. HARWOOD: Your Honor, certainly, our response is  
15 set out -- and if that is correct -- in the brief, and if -- if  
16 he is, first off, dealing -- looking at that document in itself  
17 -- and I, frankly -- I'm not a Norwegian lawyer, and the  
18 parties here are Norwegian. The vessel as it was bareboat  
19 chartered would have a Norwegian flag. So everything under  
20 U.S. law would point to choice of law calling for application  
21 of Norwegian law.

22 THE COURT: Sure, but, I mean, he does have -- it is  
23 a separate physical document here. That's Exhibit 2. That I  
24 understand.

25 MR. HARWOOD: That's absolutely correct, Your Honor.

1 And that document says, at the top of it, quote, side agreement  
2 to time charter party between what is, in fact, the plaintiff -  
3 -

4 THE COURT: Yes.

5 MR. HARWOOD: -- as A.S. and Rolv Berg Drive as  
6 regarding this vessel. If this was being construed under New  
7 York or general maritime law of the United States, that would  
8 say a side letter or side agreement is an addendum or in  
9 addition to, and then you'd do a factual finding as to what the  
10 parties intended.

11 And under Norwegian law, which is applicable to the  
12 charter -- in that clause thirty-one, it refers to English  
13 Norwegian law, whatever that is.

14 THE COURT: Yes. No, I saw that reference in the  
15 papers and wondered the same thing.

16 MR. HARWOOD: Well, I guess they'll sort it out over  
17 there. But I think Mr. Frevola's arguments are good and well,  
18 but they will be subject to a Norwegian lawyer or, indeed, an  
19 English lawyer opining on them.

20 But the point is if we accept his assertion that this  
21 is a separate agreement, then we're entitled to bring a Rule B  
22 action, provided we can make the threshold showing of admiralty  
23 jurisdiction. And then Mr. Frevola, on his own Rule E  
24 application, will be making these very arguments that he's  
25 making today, presumably with the support of Norwegian lawyers'

1 affidavits or declarations saying under Norwegian law this does  
2 not give rise to admiralty jurisdiction, or whatever the  
3 argument is.

4 Your Honor, on that point -- and if I may just for  
5 one minute -- the -- because the Court is entirely correct in  
6 granting this application, because Rule E, just so -- for  
7 future reference, Rule E does actually refer to the hearing for  
8 other relief consistent with this rule.

9 A prompt Rule E(f), little F, refers to -- it shall  
10 be entitled to a prompt hearing at which plaintiff shall be  
11 required to show why the arrest or garnishment should not be  
12 vacated or other relief granted consistent with these rules,  
13 which was my request for counter security.

14 And in fact, Mr. Frevola raised this in  
15 correspondence with me as to why I'm not making a motion under  
16 regular motion practice, and I said I've already made it, but  
17 if you want to discuss a briefing schedule -- I had mistakenly  
18 wrote to Judge Scheindlin, and then the letter came -- and I  
19 readdressed the letter to Your Honor, and it was our intention  
20 to contact chambers to set some sort of agreed expedited  
21 briefing schedule.

22 So I do apologize if this has necessitated a lot of  
23 work for your court, Your Honor.

24 But if I may on the other arguments, I think, if I  
25 may approach, there's a decision which I --

1 THE COURT: Yes.

2 MR. HARWOOD: -- I didn't have time to get from the  
3 West -- Lexis --

4 THE COURT: That's okay.

5 MR. HARWOOD: It is -- I've given Mr. Frevola a copy.  
6 Your Honor, that decision is in somewhat similar circumstances,  
7 an argument of a counterclaim and request for counter security  
8 being frivolous, and Judge Lynch there suggesting that the --  
9 quote:

10 "On the current record it cannot be said that  
11 defendant's counterclaim is frivolous. Plaintiff, it  
12 is true, proffers a purported copy of the charter  
13 party that appears to preclude the premise of the  
14 counterclaim. However, defendant proffers a document  
15 that it contends embodies the true agreement."

16 And then the judge continued:

17 On the record, the Court cannot determine which  
18 party's document is accurate and would be beyond the  
19 limited function of the Court on this motion to try  
20 and determine the legal effect of the writer --  
21 -- et cetera.

22 Your Honor, the point being, as we stated in the  
23 brief, that the merits were a condition precedent has been  
24 triggered under the side letter is really a question on the  
25 merits for whichever tribunal it is, either the arbitral



1 tribunal or the Norwegian court.

2 THE COURT: No, I see that's your main thrust, that  
3 you made the prima facie showing you need, and that's the end  
4 of it.

5 And I take it the response to that, or your reply, is  
6 but none of this arises under admiralty jurisdiction.

7 MR. FREVOLA: More than that, Your Honor.

8 THE COURT: But I mean, that's part of it, correct?

9 MR. FREVOLA: Absolutely, Your Honor.

10 THE COURT: Okay. Go ahead.

11 MR. FREVOLA: Not only that, first of all, the  
12 Finecom decision itself, if you look up a little further up --  
13 now, this is the one sole decision we have out there, Your  
14 Honor. This is gold. This is a valuable decision in that it's  
15 the only E(7) decision that we have found out here that is  
16 post-Aqua Stoli, where the prima facie test arguably has come  
17 about.

18 Other district courts have said reasonable grounds  
19 test. And I'm actually arguing the Second Circuit on this,  
20 Your Honor, and I think that reasonable grounds is probably the  
21 right test.

22 But in Finecom, we've got a decision that was -- I'm  
23 sorry, Your Honor, I -- actually, Finecom's one decision.  
24 There's another decision, actually, later I'll point to in a  
25 second. But Finecom is post-Winter Storm, pre-Aqua Stoli.

1 But in the -- at the bottom of the second page of the  
2 non-reporter decision, and in the middle of the right-hand  
3 column on the first page of the Westlaw decision, Your Honor,  
4 before getting to this issue of this -- of a battle of the  
5 sides of which one's the right one to believe, plaintiff argues  
6 that the counterclaim is frivolous because the charter party on  
7 its face provides that stowage was the responsibility of  
8 defendant, not plaintiff.

9 The premise that counter security will not be  
10 required on the basis of frivolous counterclaims is a sound  
11 one. It would hardly put the parties on an even footing to  
12 permit one side to obtain security on the basis of totally  
13 frivolous claims simply because its adversary had obtained  
14 security on the basis of a non-frivolous claim.

15 THE COURT: Right. I don't -- I don't think Mr.  
16 Harwood would disagree with that. But then it looks like Judge  
17 Lynch goes on and says I really can't understand the merits of  
18 a dispute just when we're at the pleading stage, and I'm not  
19 going to prejudge them, and that's especially true when I, the  
20 judge, decide things, not a foreign arbitration panel. So  
21 what's your response there?

22 MR. FREVOLA: Your Honor, I think it's clear in this  
23 decision that you had affidavits from both sides and differing  
24 battles in terms of the forms. In this situation --

25 THE COURT: But the affidavits -- in what decision?

1 MR. FREVOLA: I think Finecom it looks like, Your  
2 Honor, there were two opposing positions about what was the  
3 governing contract.

4 THE COURT: Well, what do I have here --

5 MR. FREVOLA: Your Honor, here --

6 THE COURT: -- to say that it's frivolous?

7 MR. FREVOLA: We have the owner of the Aldoma --

8 THE COURT: I have your people saying we're a small  
9 company and we can't pay it without releasing the security  
10 that's been given to us. I have your people saying it's two  
11 separate contracts so it doesn't arise out of the same  
12 transaction or occurrence. But what do I have that says it's  
13 frivolous?

14 MR. FREVOLA: Well, most significantly, Your Honor,  
15 is you have the one affidavit or statement from a non-involved  
16 party, --

17 THE COURT: That's the owner, yeah.

18 MR. FREVOLA: -- the owner of the vessel explaining  
19 why they would not allow it to be rechartered under the Rolv  
20 Berg --

21 THE COURT: That has to do with the torque of -- on  
22 the one side, the prior ship capsized -- is that what you're  
23 meaning?

24 MR. FREVOLA: No, Your Honor. Actually, --

25 THE COURT: No?

1 MR. FREVOLA: -- it talks about economics. The owner  
2 of the Aldoma had a -- there was a rider provision to the North  
3 Offshore, AMNGR charter party, the -- let me get the date right  
4 -- I believe it was a March 6th --

5 THE COURT: Well, the March 6th is the second  
6 contract, isn't it? That provides for the renewal of the  
7 bareboat charter party --

8 MR. FREVOLA: Let me make sure about this, Your  
9 Honor.

10 THE COURT: -- as of March 6th, 2006.

11 MR. FREVOLA: Right. It was a fourteen-month  
12 contract between the head owner --

13 THE COURT: Oh, no, no, I'm --

14 MR. FREVOLA: The other one's --

15 THE COURT: -- let me just make sure.

16 MR. FREVOLA: -- March 5th, 2004, Your Honor.

17 THE COURT: And what -- is this a different one that  
18 you're talking about?

19 MR. FREVOLA: Right. The head charter party between  
20 the Russian owner and North Offshore --

21 THE COURT: It's as of March 6th, 2006.

22 MR. FREVOLA: Yes, Your Honor. It was a fourteen-  
23 month --

24 THE COURT: Okay.

25 MR. FREVOLA: -- charter party with --

1 THE COURT: Right.

2 MR. FREVOLA: -- two one-year potential extensions.

3 THE COURT: Right.

4 MR. FREVOLA: Now, if you look at --

5 THE COURT: And the extensions are possible  
6 extensions. Are they not found in your Exhibit 2, an agreement  
7 entered into March 5, 2004?

8 MR. FREVOLA: No, Your Honor.

9 THE COURT: Okay.

10 MR. FREVOLA: That is the sub-charter, saying if we  
11 can get the extension from the owners, you'll get it from us.

12 THE COURT: All right.

13 MR. FREVOLA: Now, --

14 THE COURT: And that's the one that you say has the  
15 contingency in it.

16 MR. FREVOLA: Yes, Your Honor.

17 THE COURT: That is the contingency.

18 MR. FREVOLA: Right. Now, Exhibit 3, Your Honor, to  
19 Mr. Svein Hoel's --

20 THE COURT: Is that the same --

21 MR. FREVOLA: -- affidavit --

22 THE COURT: -- declaration?

23 MR. FREVOLA: Yes, Your Honor. Exhibit 3 is the head  
24 charter, the fourteen-month head charter.

25 THE COURT: Just a moment. [Pause] Yes?



1 MR. FREVOLA: And at the very end, the last page of  
2 Exhibit 3, --

3 THE COURT: Yes?

4 MR. FREVOLA: -- is the financial basis of  
5 determining hire payments that is supposed to essentially  
6 escalate with a rising market. The owner was trying -- the  
7 head owner and the Russian owner was trying to apparently  
8 protect themselves against a rising hire market by saying --

9 THE COURT: Yes.

10 MR. FREVOLA: -- we want fifty percent of any fee you  
11 get above a certain amount.

12 THE COURT: In other words, it's like a landlord  
13 wanting to obtain the profit of any sublease that a tenant --  
14 that he permits a tenant to have -- I'll let you sublease this,  
15 but if you rent it for more than the lease I want fifty percent  
16 of the differential.

17 MR. FREVOLA: Precisely, Your Honor.

18 THE COURT: Is that an analogy? Okay.

19 MR. FREVOLA: Now, if you go to Exhibit 4, which is  
20 just around the corner on the next page after the Exhibit 4  
21 tab, in conjunction with that charter party there was another  
22 agreement signed, and it specifically deals with the -- the way  
23 that the head owner will allow North Offshore to continue to  
24 charter this vessel.

25 And it says -- the second sentence of that agreement

1 | says there shall not be given any extension or further charter  
2 | parties, inclusive of any already-signed options, with Rolv  
3 | Berg Drive A.S. without the prior written consent of the owner.  
4 | And there's another thing that talks about any charter party  
5 | whatsoever, saying that we are not going to unless the amount  
6 | is such that we're going to make essentially at least a  
7 | thousand dollars more on the fifty-fifty split.

8 |           So a third party was controlling whether or not the  
9 | charter could be granted to Rolv Berg Drive.

10 |           THE COURT: And because they did not give their  
11 | consent, you say the counterclaim is frivolous.

12 |           MR. FREVOLA: We've got a --

13 |           THE COURT: Is that right?

14 |           MR. FREVOLA: Yes, Your Honor. We've got a third  
15 | party who has got -- who has the least interest of everyone  
16 | saying that we refuse to give it because predated contractual  
17 | documents say that they want to make a certain profit on the  
18 | vessel over a certain period of time.

19 |           THE COURT: Right. Now, let me ask two questions.

20 |           MR. FREVOLA: Your Honor, if I could, before we go  
21 | that -- there's one other thing about this separate document  
22 | issue. It's a very small thing, but -- and it may be a little  
23 | subtle, but just to show you why I think that the separate  
24 | document argument has got more weight than one would suspect --  
25 | and I refer you back to Exhibit 2 --

1 THE COURT: Yes?

2 MR. FREVOLA: Two times one year.

3 THE COURT: Yes?

4 MR. FREVOLA: If the Exhibit 2 side agreement were  
5 merely part of the original contract and not a separate  
6 contract that was signed --

7 THE COURT: Wait just a moment. [Pause] If the  
8 Exhibit 2 -- go ahead.

9 MR. FREVOLA: Was not a separate contract, it was  
10 merely a rider, let's say, to the original charter party as  
11 oppose to a new document, then --

12 THE COURT: Yes?

13 MR. FREVOLA: -- you've got a disparity between the  
14 extension period on the face of the first document and what  
15 they're saying here in the second document.

16 THE COURT: I see. Go ahead.

17 MR. FREVOLA: The extension period on the face of the  
18 original charter party is fifteen days.

19 THE COURT: And what's Exhibit 3?

20 MR. FREVOLA: Exhibit 3 is the head charter between  
21 the North Offshore and the Russian owner, and that was the  
22 agreement that basically said if you're going to use your  
23 extension options, if you're going to use those extra two one-  
24 year periods that Rolv Berg says North Offshore could, --

25 THE COURT: Yes?

1 THE COURT: Same as the Hoel --

2 MR. FREVOLA: The same -- the -- sorry -- I'm sorry,

3 --

4 THE COURT: H O E L?

5 MR. FREVOLA: -- Exhibit 1, yes.

6 THE COURT: Of the H O E L affidavit?

7 MR. FREVOLA: Yes, Your Honor.

8 THE COURT: All right.

9 MR. FREVOLA: Exhibit 1.

10 THE COURT: Go ahead.

11 MR. FREVOLA: And on the first page of Exhibit 1, if  
12 you look halfway down the page on the right-hand column, there  
13 is a box that's numbered ten.

14 THE COURT: Yes, sir.

15 MR. FREVOLA: And that box says extension of period  
16 of hire, and then parentheses, optional, close paren.

17 THE COURT: Yes?

18 MR. FREVOLA: It says the period of extension under  
19 the second --

20 THE COURT: Fifteen days.

21 MR. FREVOLA: -- is fifteen days. Now, Your Honor, I  
22 now turn you to Exhibit 3, which is the head charter. Same  
23 form.

24 THE COURT: Yes?

25 MR. FREVOLA: Same block.

1 MR. FREVOLA: -- you're going to have to do it at a  
2 price that's worth our while.

3 THE COURT: But that's -- that's Exhibit 3.

4 MR. FREVOLA: Yes, Your Honor.

5 THE COURT: And the price that's worth our while is  
6 in the additional agreement to supply time eighty-nine dated 12  
7 May of 2005?

8 MR. FREVOLA: Which is the rider to the contract.  
9 It's part of the original charter, and there's a separate --

10 THE COURT: Well, when you say original charter, it's  
11 part of the head charter?

12 MR. FREVOLA: Yes, Your Honor. Yes, Your Honor.

13 THE COURT: Okay.

14 MR. FREVOLA: And if you take a look, I believe it's  
15 signed and dated the same day as the head charter.

16 THE COURT: Twelve May 2005?

17 MR. FREVOLA: Yes, Your Honor.

18 THE COURT: Where do I find the date of the -- oh,  
19 yes, 12 May 2005. Yes.

20 MR. FREVOLA: See, unlike the other agreements, Your  
21 Honor, these are all signed the same day.

22 THE COURT: But again, isn't this asking me to look  
23 at the merits, which Mr. Harwood's cases say and, I think,  
24 Judge Lynch's case say I should not be doing?

25 MR. FREVOLA: I would say if you have a -- if you



1 have competing affidavits or, more importantly, competing  
2 contractual documents where there's a dispute about what  
3 governs, Your Honor, that creates a problem. But there is a --  
4 see if I can find it. I believe it's an Eastern District of  
5 Louisiana case, Your Honor, that talks about this issue.

6 And the judge essentially said I am not holding this  
7 decision to be res judicata or something on the merits.

8 THE COURT: Right, it's not a decision on the merits  
9 in terms of the end of this case.

10 MR. FREVOLA: It's akin --

11 THE COURT: It's a decision for purposes of  
12 determining whether or not there should be counter security.

13 MR. FREVOLA: It's akin, Your Honor, to, I would say,  
14 a state law prejudgment attachment where there's a likelihood  
15 of success on the merits. What I'm saying here is that --

16 THE COURT: Yeah, but again, I -- no, I understand  
17 the point. I go back to Mr. Harwood saying the cases don't --  
18 there is no test of likelihood on the merits. The only test  
19 that he has to meet, he says, is a prima facie case, and he's  
20 made that.

21 MR. FREVOLA: Well, Your Honor, the three cases that  
22 have been decided by Southern District of New York courts since  
23 Winter Storm and the one case since Aqua Stoli -- none of them  
24 point say that it's a prima facie standard. There is no case  
25 law to support this argument that a Rule E counterclaim merely

1 be pled as a prima facie claim.

2 THE COURT: So you're saying that he's wrong after  
3 Winter Storm.

4 MR. FREVOLA: I'm saying, Your Honor, that Winter  
5 Storm and Aqua Stoli never touched on this, and that the  
6 analysis that has happened since back in the 1800s, you know,  
7 back with Admiralty Rule -- I believe it's Admiralty Rule 50  
8 and fifty-three talk about there being a presumption in favor  
9 of counter security.

10 But in the -- in the case we cited, the Baltimore  
11 Washington case, or Washington-Southern case -- excuse me for a  
12 second, Your Honor, and I'll pull up that cite for you.  
13 [Pause] Washington-Southern Navigation Co v. Baltimore &  
14 Philadelphia Steamboat Co. It's 263 U.S. 629. This was  
15 decided in 1924, Your Honor.

16 And in that decision, the defendant was making very  
17 similar arguments, saying well, the rule says we're allowed to  
18 get this, and therefore we get it without any exceptions. And  
19 the Supreme Court said wait a minute, this is a codification of  
20 prior federal court decisional law that we're now putting into  
21 a rule to guide the courts by.

22 And it would be a perversion of the rule to create an  
23 absolute right to counter security in every circumstance.

24 THE COURT: Refer me in your memorandum of law to --  
25 you said there were three post-Winter Storm and one post-Aqua

1 Stoli case. Where are you -- where are --

2 MR. FREVOLA: Actually, Your Honor, --

3 THE COURT: -- you citing that?

4 MR. FREVOLA: -- I'm going to have to give you the  
5 cites -- I've got all three of them here, Your Honor. I  
6 brought them.

7 THE COURT: Okay. Go ahead.

8 MR. FREVOLA: I was able to bring them out. I've got  
9 the Ythan v. Americas Bulk Transport Limited, which Mr. Harwood  
10 cites. That's Y T H A N Limited. There is the Finecom  
11 decision which Your Honor already has a copy of. And there is  
12 another case that Mr. Harwood was involved in, actually,  
13 Clipper Shipping Lines v. Global Transporte Oceanico -- I'm  
14 killing that name, I'm sure, Your Honor.

15 THE COURT: And are all of these three cited in your  
16 memoranda?

17 MR. FREVOLA: No, Your Honor, because this is an  
18 issue that came up today.

19 THE COURT: Okay.

20 MR. FREVOLA: But the case that I'd like to --

21 THE COURT: And you're handing up Clipper and Ythan  
22 Limited. Okay.

23 MR. FREVOLA: And you have Finecom already. That's  
24 Judge Lynch.

25 THE COURT: And I have Finecom. Yes, sir.

1 MR. FREVOLA: Your Honor, in terms of Clipper, the  
2 reason why Clipper is -- this is the pure gold case I was  
3 talking about. It's the only decision that appears to exist  
4 since Aqua Stoli that's reported on an E(7) counterclaim. And  
5 like I said, Mr. Harwood was one of the attorneys involved in  
6 it, and he was bringing, actually, the counter security claim.

7 And there is no discussion whatsoever about there  
8 being need for a prima facie proof or things of that nature.  
9 It's silent on it.

10 THE COURT: Okay.

11 MR. FREVOLA: And because of the -- like I said, the  
12 Supreme Court's spoken on this so long ago. Until we have  
13 somebody saying that merely by pleading something without  
14 affidavit support, documents, or anything proving their claim,  
15 if an opponent comes in and says wait a minute, my hands were  
16 tied by a third party, from a third-party affidavit, I submit  
17 that it -- they've got some tough ground ahead of them to prove  
18 that claim.

19 THE COURT: Okay. I understand your position. Thank  
20 you.

21 Mr. Harwood, let me ask you a question now.

22 MR. HARWOOD: Yes, Your Honor.

23 THE COURT: I take it your position is pre-Winter  
24 Storm the test was -- all I had to do was make a prima facie  
25 case on counter security, and Winter Storm and Aqua Stoli say

1 nothing about this, and therefore it's still the same -- it's  
2 still the same test. Is that your position?

3 MR. HARWOOD: Not entirely, Your Honor.

4 THE COURT: Okay.

5 MR. HARWOOD: I think actually Aqua Stoli makes clear  
6 that you just have to make a prima facie case. That's what  
7 Aqua Stoli does say. Winter Storm was really about attaching  
8 electronic fund transfers.

9 Aqua Stoli was really what does the plaintiff have to  
10 show to survive an attack on its claim, and Judge Walker there  
11 said basically -- and I've quoted his decision -- or at least  
12 the reference to it is that basically you have limited  
13 circumstances in which you can vacate a Rule B once there's a  
14 prima facie case. And I think Mr. Frevola recognizes that in  
15 trying to, as he will, argue to the Second Circuit that, in  
16 fact, the standard is, as he told us, reasonable grounds, in  
17 his opinion. The standard is a prima facie case.

18 If it's prima facie for the plaintiff, why isn't it -  
19 - under Rule B, why isn't it prima facie for the Rule E counter  
20 security defendant? There's no logical reason it shouldn't be,  
21 just as I argued in our brief, that just because a defendant  
22 can't afford to post security is no reason for him not to have  
23 to do so any more than it's a reason for the plaintiff not to  
24 have to post counter security.

25 THE COURT: No, I think that point -- I agree with



1 that point.

2 MR. HARWOOD: And, Your Honor, in terms of Mr.  
3 Frevola's discussion of the attachments to the -- the Hoel  
4 affirmation, which we've been through -- and, frankly, I  
5 haven't discussed these or had the opportunity with my client,  
6 but the -- I would note that he refers to an Exhibit 4 to the  
7 Hoel affirmation which is a side letter, supply time eighty-  
8 nine, dated 12 May 2005, which is not dated. That's Exhibit 4,  
9 Your Honor.

10 And that's the one where the side letter says the  
11 vessel will continue operation under her present sub-charter  
12 agreement with Rolv Berg A.S. until this agreement is either  
13 terminated or otherwise expired. There shall not be given any  
14 extension or any further charter parties.

15 Your Honor, I'm not sure it -- how Mr. -- how the  
16 plaintiff would characterize this document as a separate  
17 contract. Certainly, it's -- the side letter to the original  
18 charter is a separate contract. This is clearly a separate  
19 contract. It's also -- the Exhibit 3, which is the charter  
20 party referred to, has its own integration clause, which was a  
21 point made by the plaintiffs in their opposition brief. The  
22 integration clause is in identical language.

23 And, Your Honor, I do think in terms of the question  
24 of whether or not we have a valid counterclaim, that will be  
25 very quickly resolved in the appropriate Norwegian forum where,

1 | presumably, there's some sort of summary dismissal motion with  
2 | costs and all the rest of it. But in terms of my practice, I  
3 | have never dealt with issues mostly that are resolved in London  
4 | arbitration as to whether or not there's a meritorious claim or  
5 | counterclaim.

6 |           And indeed, Your Honor, they -- I'm grateful to Mr.  
7 | Frevola to referring the Court to this decision which I didn't  
8 | have time to refer to in my brief, which is the Judge Leisure  
9 | decision that I referred to earlier, which is the Clipper case.  
10 | The case that Finecom is clearly on point, and the Ythan-  
11 | Americas Bulk case I distinguished in our brief, Your Honor.

12 |           THE COURT: All right.

13 |           MR. HARWOOD: Thank you, Your Honor.

14 |           THE COURT: Let me ask another question, Mr. Harwood.

15 |           MR. HARWOOD: Yes, Your Honor. Certainly.

16 |           THE COURT: I'm a little concerned with the  
17 | underlying policy issue raised by plaintiff. That is to say,  
18 | plaintiff says we think this a frivolous counterclaim. You say  
19 | the merits are not for now.

20 |           What is to stop any defendant who has had its  
21 | property attached from asserting any counterclaim whatsoever as  
22 | long as it has colorable validity and seeking counter security  
23 | as a device to have the original security vacated, especially  
24 | when the defendant knows that the plaintiff is  
25 | undercapitalized, or illiquid, or small, or in trouble?

1           So that's the issue plaintiff raises, and I'm a  
2 little troubled by it, so what's the response?

3           MR. HARWOOD: I fully understand that, Your Honor,  
4 and I think it's also probably addressed more frequently in  
5 terms of plaintiff using the Rule B tool in the first place and  
6 then not -- and their response in both cases, both for the  
7 claim and the counterclaim, is that at some stage they have to  
8 advance that claim in the appropriate forum.

9           And this Court can retain -- does retain jurisdiction  
10 and can set a timely -- for that claim being advanced in that  
11 forum rather than saying we have a claim, we can secure two  
12 million subject to London arbitration, we didn't have to  
13 proceed with London arbitration, we're just going to freeze  
14 your two million, or, indeed, counter security, although,  
15 obviously, in terms of the Rule E counter security or counter-  
16 claimant, the counter-claimant's got as much interest in  
17 prosecuting the matter because its funds have been attached or  
18 can only get counter security up to the same amount which the  
19 Rule B plaintiff has obtained in the first place.

20           So in fact, the pressure on the -- or the incentive  
21 for the Rule B plaintiff is less than the Rule E counter-  
22 claimant, but in terms of the Court's concern -- and I think  
23 it's an entirely appropriate one that Judge Rakoff has  
24 highlighted that Rule B is subject to abuse -- is that the  
25 Court needs to basically oversee that the matter's going

1 forward, just as, for example, in a foreign non conveniens case  
2 the Second Circuit decided recently. They said yes, okay, we  
3 agree that India is a more appropriate forum, and we will allow  
4 you to proceed in India, provided that the case is tried within  
5 one year based on the record of Indian courts proceeding for  
6 decades.

7 And I think that's the same sort of -- would be a  
8 very -- sensible approach in the Court's discretion in awarding  
9 both security and counter security.

10 THE COURT: But the reality of this situation is they  
11 have locked up -- I think we said six hundred thousand dollars  
12 of your client's money. They've already had two arbitration  
13 awards in their favor. If that six hundred -- so it seems to  
14 me the six hundred thousand is a very effective means,  
15 apparently, of bringing you to the arbitration table.

16 And if that were to be released because they couldn't  
17 otherwise pay an award of counter security, then their ability  
18 to proceed to the next arbitration phase would be hampered  
19 compared to what it now is. Am I right about that?

20 MR. HARWOOD: I don't think that's the case, Your  
21 Honor, because the two arbitration awards have been paid in  
22 full. The present dispute giving rise to the second or third  
23 amended complaints are, as the Court correctly stated, the  
24 question of unpaid hire.

25 But as we stated in the answer and counterclaim, we

1 also have a claim for bunker invoices -- that's the fuel oil on  
2 board -- for a hundred and fifty-four thousand dollars, plus a  
3 claim for a performance bond which may or may not arise. So  
4 these presumably strictly charter claims and counterclaims will  
5 be the subject of whichever arbitral panel hears them at some  
6 stage.

7 But in terms of whether or not they'll be able to  
8 satisfy an award, they should be no less concerned that they  
9 will satisfy -- that our client will pay the award voluntarily  
10 because, in fact, the attachment of the four hundred and fifty  
11 thousand dollars belonging to Rolv Berg at ABN came in August,  
12 and I believe the payments were made certainly prior to that.

13 But it's the same concern we would have that we  
14 wouldn't get paid in respect of our claim on the side letter  
15 agreement. But the long and short of it, Your Honor, is if  
16 they want to say -- and we have conceded if they want to say  
17 no, you're not entitled to your counter security under the side  
18 letter, because the side letter is a separate contract, then  
19 I'm instructed to say fine, we don't want counter security,  
20 we'll go for Rule B relief if we can get it.

21 THE COURT: Do that again.

22 MR. HARWOOD: If they pleaded in the alternative,  
23 Your Honor, in the brief that if they -- accepting their  
24 position that the side letter is a separate contract, then we  
25 will take the position, then, we should be entitled, if it is a



1 separate contract, to maintain our own separate Rule B action.

2 THE COURT: No. No, that I understood. And as a  
3 matter of fact, I said that when we first began. And Mr.  
4 Frevola's response to that is he doesn't think there's  
5 admiralty jurisdiction. I think he's got a tough road on that  
6 one, but that's his position.

7 MR. HARWOOD: That will be for him to show if we're  
8 successful in attaching any of the plaintiff's wire transfers  
9 through New York. And given their plea of poverty, it sounds  
10 like we won't be. But that's a commercial risk our client is  
11 prepared to take.

12 THE COURT: Right. All right.

13 MR. HARWOOD: Thank you, Your Honor. Thank you for  
14 your time.

15 THE COURT: I thank you both.

16 Is there anything that either of you want to tell me?  
17 I think I have a good understanding of now.

18 Sir?

19 MR. FREVOLA: Your Honor, a couple of things, if I  
20 may. The side letter issue that was mentioned in terms of the  
21 North Offshore and the Russian owner, head owner, side letter  
22 --

23 THE COURT: Yes.

24 MR. FREVOLA: I don't think that there's -- if it's a  
25 separate contract or not, and I think it very well could be

1 argued it's a separate contract, it's still an instrument that  
2 they've signed that binds them to behave in a certain way, and  
3 that's the import of it. I'm not trying to --

4 THE COURT: But we go back -- I understand that, but  
5 we go back to the issue of why should I be looking at the  
6 merits now on an application for counter security.

7 MR. FREVOLA: Again, I would say that that's because  
8 we put in this third party --

9 THE COURT: No, I understand.

10 MR. FREVOLA: -- saying things are one way, and  
11 there's been no response to the other way.

12 THE COURT: I understand.

13 MR. FREVOLA: Moving on, Your Honor, the other thing,  
14 also, here is that there is a big difference between a Rule E  
15 counter security application and a Rule B attachment. One of  
16 the differences is that here we're having an application being  
17 made for a court to order someone to post money here that has  
18 not been attached or any type of securing of an asset been  
19 done, but they're being asked to order to put it into -- you  
20 know, into the court's coffers or being posted here in escrow,  
21 or some of that nature.

22 Also, as mentioned before, it has to be done whether  
23 it's an admiralty claim or not an admiralty claim, and that  
24 makes it different than a Rule B application.

25 Your Honor, there's something else going on that I've

1 | been told by my client. I could be mistaken. But I asked this  
2 | question specifically for purposes of this issue coming up.  
3 | I've asked has Rolv Berg actually submitted a counterclaim in  
4 | arbitration, and this arbitration was made in May, and they  
5 | have not done that, to my understanding.

6 |           So, Your Honor, we have that very situation where  
7 | we're five months down the line or four months down the line.  
8 | No counterclaim's been made. Now, I could --

9 |           THE COURT: But what do you derive from that?

10 |           MR. FREVOLA: What I've derived from it, Your Honor,  
11 | is that they have the very issue in terms of the duress aspect  
12 | -- if the claim has not been made in the arbitration, perhaps  
13 | it's not being made in the arbitration for fear of the costs  
14 | and other issues that could arise if they make it and they're  
15 | found to be wrong, one.

16 |           Or two, perhaps they're seeking to extend, delay,  
17 | push things off to make this economically impossible for North  
18 | Offshore to do what they're trying to do. In the case of North  
19 | Offshore's claim, Your Honor, the charter party is a very well  
20 | known principle in maritime law under charter parties. And  
21 | that is freight or hire is payable without discount.

22 |           In other words, no matter what kind of a setoff claim  
23 | you have, arbitrators will issue a partial final award,  
24 | essentially almost immediately, once it's shown that the vessel  
25 | performed, was out at sea, working for the charter, and

1 actually did it.

2 And here, Your Honor, a majority of these claims here  
3 are hire claims. The charter party specifically says it, hire  
4 payable without discount. It's in part two of the charter.  
5 That's Exhibit 3 to the Hoel affirmation. And it's in part  
6 two, section -- it's paragraph ten, ten E, payments. Payments  
7 of hire, bunker invoices and disbursements for the charter's  
8 account --

9 THE COURT: Shall be received --

10 MR. FREVOLA: Yep, and shall be made --

11 THE COURT: -- in full without discount.

12 MR. FREVOLA: Precisely, Your Honor. And that just  
13 restates well settled law on this, because the vessel has  
14 already performed.

15 THE COURT: Right, but again, that's a reason why,  
16 according to you, you received those arbitral awards. But  
17 what's the relevance of that to this?

18 MR. FREVOLA: Well, this claim as well, Your Honor,  
19 is for performance already made, benefit already gotten. When  
20 looking at the equities -- and again, this is a pure equitable  
21 decision by Your Honor. If you look at the case law, it's a  
22 matter of the Court's equity.

23 In one place, performance has been made, money  
24 earned, ship used. Whatever benefit -- I'm sure they've been  
25 paid for the use of the ship. It just hasn't been passed along

1 to us. Not only that, North Offshore has paid the Russian  
2 owner for the ship.

3 And so they're sitting here. They've got accounts  
4 receivable. They've got no money to post counter security.  
5 And they're being told you don't have any money, it's  
6 irrelevant to whether or not you should keep your security in  
7 New York. As a court of equity, Your Honor --

8 THE COURT: Right. I understand.

9 MR. FREVOLA: -- that's the equitable portion of  
10 this.

11 THE COURT: I understand.

12 MR. FREVOLA: And, Your Honor, the only other thing  
13 is on the bunkers issue. And if you look at Mr. Hoel's  
14 affidavit and our complaint, we actually in our complaint have  
15 given credit to Rolv Berg for a hundred thousand dollars of  
16 bunkers remaining on board. It's in paragraph thirteen of the  
17 Hoel affirmation.

18 (Pause in proceeding)

19 THE COURT: My company has deducted the amount of a  
20 hundred thousand dollars credited to RBD for the fuel remaining  
21 aboard the Aldoma at the time of its redelivery. Yes?

22 MR. FREVOLA: So in other words, a hundred thousand  
23 dollars is conceded. And, Your Honor, in terms of -- if our  
24 order, our attachment order, wants to be reduced by fifty  
25 thousand dollars to take into account the last hundred and



1 fifty -- or the last fifty that's remaining of the hundred and  
2 fifty that they're claiming, I'm sure my client would have no  
3 problem with that.

4 THE COURT: Say that one again.

5 MR. FREVOLA: In other words, they're saying one  
6 fifty, and we're saying one hundred.

7 THE COURT: No, they're saying -- one fifty for what?

8 MR. FREVOLA: They're saying one fifty for bunkers,  
9 and I've actually got their --

10 THE COURT: Oh, in other words, what you're saying,  
11 if I can put it into my English, as opposed to admiralty  
12 English, the counterclaim is seeking a hundred and fifty  
13 thousand dollar credit for the fuel that was on the ship.

14 MR. FREVOLA: Yes, Your Honor.

15 THE COURT: Okay. And you've already given them a  
16 hundred thousand credit. You've deducted it from your claim.

17 MR. FREVOLA: Absolutely, Your Honor.

18 THE COURT: So what is your proposal?

19 MR. FREVOLA: I would propose that we reduce the  
20 attachment order by fifty thousand dollars so that, in effect,  
21 that's not fifty thousand dollars that will be sought to be  
22 attached, --

23 THE COURT: I understand.

24 MR. FREVOLA: -- in recognition of that.

25 THE COURT: I understand.

1 MR. FREVOLA: Besides that, Your Honor, I believe  
2 that's everything.

3 THE COURT: Now, when you say reduce the attachment  
4 order, you're talking about releasing fifty thousand of the  
5 funds that have been attached?

6 MR. FREVOLA: Well, I believe, Your Honor, also --  
7 Mr. Harwood mentioned one point one million. I believe the  
8 actual order right now, the amount sought is nine hundred and  
9 eighty-eight thousand. We have four hundred and sixty-nine  
10 thousand --

11 THE COURT: Attached.

12 MR. FREVOLA: -- attached. It might be four seventy-  
13 three, Your Honor.

14 THE COURT: That's all right.

15 MR. FREVOLA: But in other words, we have about a  
16 little under half --

17 THE COURT: Yes.

18 MR. FREVOLA: -- of the full amount.

19 THE COURT: Yes.

20 MR. FREVOLA: And my proposal was that to reduce the  
21 attachment order from nine eighty-eight down to whatever this  
22 difference is, about nine thirty-eight, to take into account an  
23 additional credit, not conceding --

24 THE COURT: Oh, all right. But that's not -- I  
25 understand.

1 MR. FREVOLA: Not conceding the merit of the claim,  
2 but at least saying that we'd impact them less.

3 THE COURT: Nor is that conceding a great deal,  
4 because you haven't found the money, and presumably you've been  
5 looking.

6 MR. FREVOLA: Yes, Your Honor.

7 THE COURT: All right. Fine.

8 MR. FREVOLA: Yes, Your Honor.

9 THE COURT: All right. Thank you, gentlemen. I  
10 appreciate it.

11 MR. FREVOLA: Thank you, Your Honor.

12 THE COURT: Let's go off, please.

13 MR. HARWOOD: Thank you, Your Honor.

14 THE COURT: Ms. Blakely, let's go -- cut the --

15 (End recording)

16 \* \* \* \* \*

17 I, KRISTIN M. RUSIN, court approved transcriptionist, certify that the  
18 foregoing is a correct transcript from the official electronic sound recording of the proceedings  
19 in the above-entitled matter.

20 Transcript is certified original only if signed in green ink.

21 11/21/07 

**EXHIBIT C**  
**TO THE AFFIDAVIT OF JEREMY J.O. HARWOOD**  
**DATED DECEMBER 21, 2007**

On February 16, 2004, North Offshore entered into a three-year charter party with RBD for the ALDOMA, a vessel owned by non-party Arktikmorneftgazrazvedka ("AMNGR"), a Russian company. Disputes arose in connection with the February 2004 charter party and North Offshore brought various claims against RBD in binding arbitration proceedings that were held in Norway. In September 2006 and April 2007, the arbitration panel made two separate awards in favor of North Offshore, and RBD has since paid the monies owed pursuant to those awards to North Offshore. However, North Offshore has asserted additional claims against RBD in the amount of approximately \$800,000 that also arise out of the February 2004 charter party; North Offshore intends to arbitrate those claims in additional proceedings in Norway.

In connection with North Offshore's outstanding claims against RBD – as well as the portion of the arbitration awards which, at one point in the course of this litigation, had not yet been paid – North Offshore initiated an action in this Court seeking an Order of Attachment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims. In April 2007, this Court authorized the attachment and garnishment of up to \$532,051.08 of RBD's funds. In July 2007, the Court granted North Offshore's request to amend the Order of Attachment to authorize the attachment of up to \$988,411.43 of RBD's funds. North Offshore attached approximately \$400,000 of RBD's funds in September 2007.

Prior to the attachment of its funds, RBD filed an Answer and Counterclaim pursuant to Supplemental Rule E(7) in August 2007. In its counterclaim, RBD asserts that North Offshore breached a written "side agreement" dated March 5, 2004 between the two parties pursuant to which RBD had the option of extending the time charter for the ALDOMA. RBD contends that North Offshore rejected RBD's attempt in January 2007 to exercise that option, and RBD now seeks approximately \$13 million in damages. North Offshore responds that a condition precedent to the exercise of RBD's option was the consent of AMNGR, the vessel's owner. Because AMNGR refused to provide that consent for various commercial reasons, North Offshore asserts that an extension of the time charter was not possible and that it therefore did not breach any side agreement with RBD.

## **II. DISCUSSION**

RBD seeks \$1.1 million in countersecurity pursuant to Supplemental Rule E(7). That provision provides in relevant part that:

When a person who has given security for damages in the original action asserts a counterclaim that arises from the transaction or occurrence that is the subject of the original action, a plaintiff for whose benefit the security has been given must give security for damages demanded in the counterclaim unless the court for cause shown, directs otherwise.



Supp. R. E(7)(a). Here, RBD asserts that it is entitled to Rule E(7) countersecurity because RBD has had approximately \$400,000 of its funds attached as security for North Offshore's claims in the original action. RBD contends that because its counterclaim arises from the same "transaction or occurrence that is the subject of the original action," it is therefore entitled to security by right. Furthermore, RBD asserts that countersecurity should issue because its counterclaim satisfies the minimal pleading requirements for admiralty claims seeking security pursuant to Supplemental Rule B.

Indeed, the rule in the Second Circuit is that "an attachment should issue [pursuant to Rule B] if the plaintiff shows that 1) it has a valid prima facie admiralty claim against the defendant; 2) the defendant cannot be found within the district; 3) the defendant's property may be found within the district; and 4) there is no statutory or maritime law bar to the attachment." Aqua Stoli Shipping Ltd. v. Gardner Smith Pty Ltd., 460 F.3d 434, 445 (2d Cir. 2006).

Furthermore, there is no "broader equitable inquiry" and the party seeking security need not show that the "the attachment is necessary to obtain jurisdiction over a defendant or to secure a potential judgment." Id. at 446.

However, the Aqua Stoli standard for a Rule B attachment is not the standard that applies to motions for countersecurity brought pursuant to Rule E(7). In particular, the language of Rule E(7) directing that security be granted "unless the court for cause shown, directs otherwise" makes it entirely clear that "the trial court possesses broad discretion in deciding whether to order countersecurity." Result Shipping Co. v. Ferruzzi Trading USA Inc., 56 F.3d 394, 399 (2d Cir. 1995). In exercising that discretion, courts consider several factors but "the core purpose of the countersecurity rule is to place the parties on an even footing; if one party is deprived of the use of its property during the litigation but the adverse party is not, despite the pendency of reciprocal claims, the party with the security may have unfair leverage in the action." Finecom

Shipping Ltd. v. Multi Trade Enters. AG, No. 05 Civ. 6695, 2005 U.S. Dist. LEXIS 25761, at \*2 (S.D.N.Y. Oct. 24, 2005). See also Washington-Southern Navigation Co. v. Baltimore & Philadelphia Steamboat Co., 263 U.S. 629, 638-39, 44 S. Ct. 220, 68 L. Ed. 480 (1924)

(construing former Admiralty Rule 53). Furthermore, the trial court must be

guided by the essential and equitable purposes of the rule. In doing so, the court must weigh the importance of the security interest giving rise to the initial seizure, and the burden of posting countersecurity, against the potential injustice of requiring the defendant-counterclaimant to post security without affording reciprocal protection.

Result Shipping, 56 F.3d at 400. Nothing in the Second Circuit's decision in Aqua Stoli disturbs that approach or suggests that a motion for countersecurity pursuant to Rule E(7) need only meet the prima facie requirements of an admiralty claim brought pursuant to Rule B. Rather, motions for countersecurity remain – even post-Aqua Stoli – subject to the “broad discretion” of the court. See Clipper Shipping Lines Ltd. v. Global Transporte Oceanico S.A., No. 06 Civ. 15299, 2007 U.S. Dist. LEXIS 18827, at \*3 (S.D.N.Y. Feb. 27, 2007).

Accordingly, whether to grant or deny RBD's motion for countersecurity is an equitable determination within the broad discretion of this Court. Several factors weigh in favor of denying that motion.

First, RBD has failed to submit any evidence whatsoever to counter the proposition that its counterclaim is entirely without merit. By contrast, North Offshore has submitted affidavits from Svein Hoel, the Managing Director of North Offshore, and Oleg S. Mnatsakanyan, Director General of AMNGR. Those affidavits support North Offshore's position that it was not possible to extend RBD's charter party because the condition precedent to that extension – the consent of AMNGR – was not fulfilled based on a commercial decision by AMNGR. (See Affidavit of Svein Hoel dated Oct. 1, 2007 ¶¶ 5-9; Affidavit of Oleg S. Mnatsakanyan dated Oct. 1, 2007 ¶¶ 6-11.) RBD has not submitted any evidence to contravene those accounts or to explain how – in

light of those facts – North Offshore could be deemed in breach of the March 2004 side agreement. “The premise that countersecurity will not be required on the basis of frivolous counterclaims is a sound one,” Finecom Shipping, 2005 U.S. Dist. LEXIS 25761, at \*3-4, and a court “should not require countersecurity where the counterclaim is frivolous or so lacking in merit that the court can only conclude that the counterclaim was advanced solely to secure a negotiating advantage over the complainant,” Titan Navigation, Inc. v. Timsco, Inc., 808 F.2d 400, 404 (5th Cir. 1987). Mindful that the “ability to understand the merits of a dispute at an early stage is limited,” Finecom Shipping, 2005 U.S. Dist. LEXIS 25761, at \*4, the Court nonetheless finds that RBD’s counterclaim is highly speculative – relating to its alleged lost profits from the failure to obtain continued use of the ALDOMA – and RBD has provided no rebuttal to North Offshore’s position that the claim is without merit. Those deficiencies weigh against directing North Offshore to post countersecurity. See Ythan Ltd. v. Americas Bulk Transport Ltd., 336 F. Supp. 305, 309 (S.D.N.Y. 2004) (rejecting motion for countersecurity where the counterclaim was “highly contingent”); U.S. Maritime Services, Inc. v. Trade Ventures, Inc., No. 98-0499 Section “C”, 1998 U.S. Dist. LEXIS 10608, at \*6 (E.D. La. July 8, 1998) (denying countersecurity because defendants’ counterclaim was too speculative – “[u]nlike plaintiff’s claim which is based on past events reasonably due to be ascertained and quantified, defendants’ losses due to a ‘road not taken’ cannot be so readily ascertained and quantified”).

Second, North Offshore has submitted affidavit testimony and a financial statement in support of the proposition that it would be exceedingly burdensome for North Offshore – a small company with limited resources – to post the requested countersecurity. In fact, such an order would compel North Offshore to release the funds that it has already attached to secure its own claims against RBD. (See Hoel Aff. ¶¶ 15-16, 24.) Furthermore, North Offshore contends that a

significant reason for its lack of liquidity arises from the fact that it has made payments to AMNGR for the charter hire of the ALDOMA, but has not yet itself been paid by RBD for its use of the vessel. These facts suggest that granting RBD's motion for countersecurity would not result in putting the parties on the "equal footing" that Rule E(7) seeks to promote, but would rather serve to thwart the purpose of North Offshore's Rule B attachment. Rule E(7) "is not intended to impose burdensome costs on a plaintiff that might prevent it from bringing suit," Result Shipping, 56 F.3d at 400, or, on that same logic, from maintaining an action.

Accordingly, North Offshore's financial circumstances – and RBD's role in North Offshore's difficult financial position – provide additional good cause to deny RBD's motion for countersecurity.

Finally, the parties dispute whether RBD's counterclaim even arises from the same "transaction or occurrence that is the subject of the original action," which triggers a counterclaimant's right to countersecurity pursuant to Rule E(7). See Sea-Terminals, Inc. v. Independent Container Lines, Ltd., No. 89 Civ. 6931, 1990 U.S. Dist. LEXIS 11561, at \*5 (S.D.N.Y. Sept. 4, 1990) ("Supplemental Rule E(7) is identical to Fed. R. Civ. P. 13(a), which permits counter-security only for compulsory counterclaims."). North Offshore contends that the February 2004 charter party and the March 2004 side agreement constitute entirely separate transactions, that RBD's counterclaim cannot be considered a "compulsory" or "mandatory" counterclaim, and that RBD cannot therefore rely on Rule E(7). Indeed, the limited evidence before the Court at this stage suggests that RBD's counterclaim – for the breach of a purported charter extension – and North Offshore's claim in the original action – involving non-payment of hire for use of the ALDOMA and expenses associated with RBD's failure to redeliver the vessel within the agreed redelivery range – raise entirely separate issues of fact and law and may not necessarily be "so logically connected that considerations of judicial economy and fairness

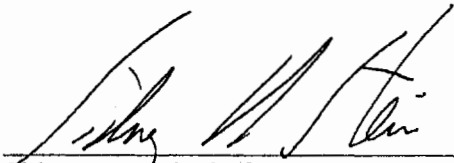


dictate that all the issues be resolved in one lawsuit.” Klein v. London Star, 26 F. Supp. 2d 689, 697 (S.D.N.Y. 1998). That would suggest that RBD’s counterclaim is not a mandatory counterclaim entitled to countersecurity. Nonetheless, the Court need not reach a determination on that point given the significant other grounds on which to deny RBD’s motion.

### III. CONCLUSION

In sum, Supplemental Rule E(7) – not Supplemental Rule B – provides the basis for RBD’s countersecurity motion, and whether to grant countersecurity pursuant to Rule E(7) falls firmly within the discretion of this Court. Here, at least two factors weigh against directing that North Offshore post countersecurity: first, RBD’s counterclaim – based on the parties’ submissions to the Court – appears frivolous and aimed primarily at thwarting North Offshore’s prosecution of the original action; and second, North Offshore is not financially able to post countersecurity without releasing the RBD assets that it has already attached. In addition, RBD’s counterclaim may not even constitute a mandatory counterclaim for purposes of Rule E(7). Accordingly, the motion by RBD for countersecurity is denied.

Dated: New York, New York  
November 29, 2007

  
\_\_\_\_\_  
Sidney H. Stein, U.S.D.J.

**EXHIBIT D**  
**TO THE AFFIDAVIT OF JEREMY J.O. HARWOOD**  
**DATED DECEMBER 21, 2007**



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ELECTRONICALLY FILED  
DOC #:  
DATE FILED: 11/6/07 (hr)

OFFICE COPY

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
NORTH OFFSHORE AS,

: 07 Civ. 3095 (SHS)

Plaintiff,

:

-against-

:

ORDER

ROLV BERG DRIVE AS,

:

Defendant.

:

-----X  
SIDNEY H. STEIN, U.S. District Judge.

A pretrial conference having been held today, with counsel for all parties present,

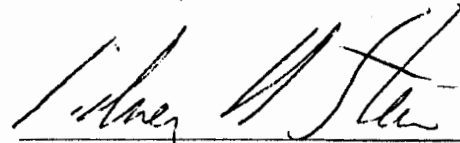
IT IS HEREBY ORDERED that:

1. For the reasons set forth on the record, defendant's motion for counter-security is denied; and

2. There will be a pretrial conference on February 8, 2008, at 10:00 a.m.

Dated: New York, New York  
November 5, 2007

SO ORDERED:

  
\_\_\_\_\_  
Sidney H. Stein, U.S.D.J.

**EXHIBIT E**  
**TO THE AFFIDAVIT OF JEREMY J.O. HARWOOD**  
**DATED DECEMBER 21, 2007**

BLANK ROME LLP  
Attorneys for Plaintiff  
Jeremy J.O. Harwood (JH 9012)  
405 Lexington Avenue  
New York, NY 10174  
(212) 885-5000

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ROLV BERG DRIVE AS,

Plaintiff,

- against -

NORTH OFFSHORE AS,

TROMS OFFSHORE AS,

Defendants.

07 CV

**NOTICE AND DECLARATION OF  
OLAV VIKØREN ON FOREIGN  
LAW PURSUANT TO F.R.CIV.P.  
RULE 44.1 AND IN SUPPORT  
OF RULE B PETITION**

OLAV VIKØREN declares under penalty of perjury under the laws of the United States:

**A. JURISDICTION UNDER NORWEGIAN LAW**

1. I am a senior lawyer at Thommessen Krefting Greve Lund AS, Oslo, Norway, counsel for Rolv Berg Drive AS ("RBD"), in its disputes with North Offshore AS ("NOA" or "North Offshore") in Norway. I was admitted to the Norwegian bar in 1984 and am licensed to practice Norwegian law.

2. I submit this declaration in support of RBD's application for a Supplemental Rule B attachment and garnishment order in respect of claims arising under

a side letter agreement dated March 5, 2005 ("Side Letter"). A true copy is Exhibit 1 hereto.

3. The Side Letter involves the charter of an ocean-going vessel "AHTS ALDOMA" (the "Vessel"). The "subject matter" of the Side Letter is clearly a maritime claim and, under Norwegian Law, the Norwegian Court will in my opinion view disputes arising from or in relation to the Side Letter as maritime claims.

4. The Side Letter disputes have been submitted or filed in the Nord-Troms County Court, Tromsø, Norway by way of a "writ of summons" dated November 7, 2007 (the "Norwegian Pleadings").

5. A true copy of the Norwegian Pleadings is Exhibit 2 hereto. A "free" and accurate translation of the Norwegian portion of the Norwegian Pleadings into English is Exhibit 3 hereto.

**B. IDENTITY OF DEFENDANTS**

6. I attach as Exhibit 4 hereto a true copy of the webpage for the Norwegian subscription service Ravinfo (and true translation into English as Exhibit 5), which provides company information. It records the relationship between North Offshore and Troms Offshore AS ("TOAS"), and records that the Defendant North Offshore is the 100% owner of the shares of three subsidiaries North Brokers and Agency AS, (2) Troms Offshore MPSV AS and (3) TOAS.

7. In a declaration dated October 1, 2007, Exhibit 6 hereto, submitted in the related Rule B action brought by NOA against RBD in this court (the "First Action") by NOA's Managing Director, Svein Hoel, he explained that NOA had

chartered the Vessel from its owner, Arktimorneptegazrasvedka ("AMNGR"). Id., ¶ 5.

8. AMNGR's "Director General", Oleg Mnatsakanyon, also submitted a declaration, dated October 1, 2007 in his First Action (the "AMNGR Declaration"), Exhibit 7 hereto.

9. In Exhibit 3 to the AMNGR Declaration AMNGR's lawyer advised RBD's lawyers, inter alia:

Arktik [AMNG] has concluded a C/P [Charter party] with NO [North Offshore AS] for a period up to 5<sup>th</sup> May 2009, including two options on [sic] one year each.

10. NOA therefore is presently the charterer or "disponant owner" of the vessel ALDOMA.

11. In the Hoel Declaration, NOA's alleges that a Statement of Accounts dated August 31, 2007 is attached as Exhibit 5. Mr. Hoel's declaration explains that "Other Operating Costs" includes bareboat hire [payable to AMNGR] for the ALDOMA (NK 7,602,029)." Id., ¶ 18.

**TOAS AS OPERATOR OF THE VESSEL**

12. I attach as Exhibit 8 a true copy of TOAS's website pages recording that TOAS is presently "operating" the Vessel, under charter from her Russian owners AMNGR.

13. To the extent that hire payments are being remitted to AMNGR by any of North Offshore's subsidiaries, including but not limited to hire payments received by its subsidiary TOAS as "operator" of the Vessel or paid by TOAS to AMNGR, then such payments are in respect of hire obligations by and between North Offshore and

AMNGR in respect of the charter for the Vessel and represent monies belonging to North Offshore being siphoned through the subsidiaries.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct.

Dated: December 23 2007  
at Oslo, Norway



OLAV VIKØREN



## **EXHIBIT 1**

**SIDE-AGREEMENT TO TIME CHARTER PARTY BETWEEN TFDS OFFSHORE  
AS AND ROLV BERG DRIVE AS REGARDING AHTS ALDOMA**

It is understood between the parties that ONGC may offer Rolv Berg Drive AS extensions to the 3 year contract with contract no: MR/MM/OFF.LGTS./CH/VESSELS//10(109)/2003. It is further agreed between the parties that should Rolv Berg Drive AS be granted extension to this contract or new contracts with ONGC, Rolv Berg Drive shall have the right to extend the charter of AHTS Aldoma on a day-rate not to exceed USD 9.000,-.

This agreement shall be subject only to TFDS Offshore securing further charter with the vessel's owner.

It is further agreed that should Rolv Berg Drive AS secure other future contracts with ONGC TFDS Offshore AS will be given first option where they have vessels which meet the requirements at competitive rates.

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Certified copy  
Kristian Lindhartsen  
Advokatfullmektig

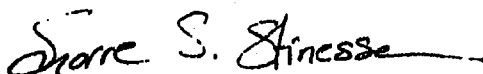
This agreement is entered into on the 5<sup>th</sup> of March 2004.

For TFDS Offshore AS



Svein Hoel  
Managing Director

For Rolv Berg Drive AS



Snorre S. Stinessen  
Coordinating Manager

## **EXHIBIT 2**

# THOMMESSEN

THOMMESSEN KREFTING GREVE LUND AS

Advokatfirma

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Postboks 1484 Vik, NO-0116 Oslo

Telefon +47 23 11 11 11

Telefaks +47 23 11 10 10

Fnr NO 957 423 248 MVA

[www.thommessen.no](http://www.thommessen.no)

Oslo, Bergen, London

Rett kopi bekreftes

Certified copy

  
**Kristian Lindhartsen**  
Advokatfullmektig

## STEVNING

til

Nord-Troms tingrett

Oslo, 7. november 2007

Vår referanse 1764501/1

<b>Saksøker</b>	Rolv Berg Drive AS v/styrets formann Rolv Berg Postboks 96 9257 Tromsø
<b>Prosessfullmektig</b>	Thommessen Krefting Greve Lund AS v/ advokatfullmektig Kristian Lindhartsen m/ rettslig medhjelper advokat Olav Vikøren Postboks 1484 Vik 0116 Oslo
<b>Saksøkt</b>	North Offshore AS v/styrets formann Svein Hoel 9291 Tromsø
<b>Prosessfullmektig</b>	Nordisk Legal Services v/advokat Magne Andersen Postboks 3033 Elisenberg 0207 Oslo
<b>Saken gjelder</b>	Erstatningskrav for kontraktsbrudd

### 1 INNLEDNING – FORMALIA

Saken bringes direkte inn for tingretten, da begge parter er bistått av advokat og saksøker således ikke finner det hensiktsmessig å bringe saken inn for forliksrådet, jf tvml § 274 første ledd nr 1.

THOMMESSEN

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Kristian Lindhartsen  
Advokatfullmektig

Både saksøker og saksøkte har forretningssted i Tromsø kommune, og rett verneting er Nord-Troms tingrett, jf reglene i tvml § 17.

## 2 SAKENS FAKTUM

Rolv Berg Drive AS hadde leid inn skipet "Aldoma" på et certeparti for en periode på 3 år.

### Bilag 1: Certeparti datert 16. februar 2004

Skipet er eiet av et russisk selskap, Arktikmor Neftegaz Razvedka. Saksøkte har leid skipet på certeparti siden 1992, og har fortsatt skipet på certeparti.

Den 5. mars 2004 inngikk partene en egen avtale om mulig forlengelse av ovennevnte certeparti. Avtalen gikk ut på at saksøker kunne fortsette å leie skipet dersom visse vilkår i den nye avtalen ("opsjonsavtalen") var oppfylte.

### Bilag 2: Side-Agreement to Time Charter Party between TFDS Offshore AS and Rolv Berg Drive AS regarding AHTS Aldoma

Den 1. august 2006 ble saksøkte informert om at saksøker ville komme til å by skipet "Aldoma" på en kontrakt med det indiske oljeselskapet Oil and Natural Gas Corporation Ltd. ("ONGC"), og for det tilfellet at man vant den anbudskonkurransen, ville utøve sin opsjon på forlengelse.

### Bilag 3: Brev datert 1. august 2006 fra Rolv Berg Drive AS til TFDS Offshore AS

I en e-post av 7. januar 2007 og brev av 2. februar 2007 erklærte saksøker at man ønsket å gjøre gjeldende opsjon på forlengelse for tre år.

### Bilag 4: E-post datert 7. januar 2007 fra Rolv Berg til Svein Hoel

I e-post fra saksøktes advokat til saksøkers advokat ble det opplyst at man ikke anså vilkårene i opsjonsavtalen som oppfylte, og at man derfor ikke ville stille "Aldoma" til saksøkers rådighet.

### Bilag 5: E-post datert 8. januar 2007 fra advokat Magne Andersen til advokat Morten Lund

I telefaks datert 19. februar 2007 fikk saksøker bekreftet at de hadde vunnet en anbudskonkurranse for ytterligere operasjon av skipet "Aldoma" med ONGC for en periode på 5 år, med en daglig rate på USD 15.900.

### Bilag 6: Telefax datert 19. februar 2007 fra ONGC til Rolv Berg

Saksøkte har forsettelig misligholdt sine forpliktelser under opsjonsavtalen ved å ikke la saksøker få leie skipet i henhold til opsjonsavtalen. Følgelig mistet saksøker kontrakten i India, og har blitt påført et tap i denne forbindelse. "Aldoma" er i dag i Nigeria, fortsatt på certeparti til saksøkte.

# THOMMESSSEN

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Certified Copy  
Kristian Lindhartsen  
Advokatfullmektig

### 3 RETTSLIGE ANFØRSLER

Saksøker anfører at saksøkte er erstatningsrettslig ansvarlig for tapet saksøker er påført som en følge av forsettelig brudd på opsjonsavtalen.

Det rettslige grunnlaget for erstatningsansvar er alminnelig erstatningsrettslige regler.

Avtalen mellom saksøker og saksøkte stipulerer to kumulative vilkår som må være oppfylt for å utøve opsjonen. For det første må saksøker ha blitt tilbudt en kontrakt fra ONGC, og for det andre må saksøkte ha rett til forlengelse av sin kontrakt for skipet fra skipets eier. Utover det stiller opsjonsavtalen ingen krav.

Det er vist ovenfor at saksøker vant anbudskonkurransen med ONGC og ble derfor tilbudt en kontrakt som nevnt i avtalen. Videre har skipet helt siden inngåelsen av opsjonsavtalen og frem til dags dato vært på certeparti fra eier til saksøkte. Vilkårene for utøvelse av opsjonen er følgende oppfylte.

Saksøker har lidd et betydelig tap i forbindelse med forventet inntekt som følge av saksøktes kontraktsbrudd. I henhold til anbudsdokumentet fikk saksøker tildelt kontrakten for 5 år på en rate á USD 15.900 per dag. Etter opsjonsavtalen er daglig rate maks USD 9.000 per dag, hvilket gir en forventet fortjeneste for saksøker på USD 6.900 per dag. Med en varighet på 5 år, ville da saksøker hatt en inntjening på  $(6900 \times 365 \times 5)$  på USD 12.592.500 for perioden

I tillegg, har saksøker stilt et performance bond overfor ONGC pålydende USD 422.150. Et performance bond er en bankgaranti for rettmessig oppfyllelse av en avtale. Ved at saksøker ikke har oppfylt sin kontraktsforpliktelse overfor ONGC, har ONGC begjært utbetaling under dette performance bond, og saksøker har således lidd et mulig ytterligere tap på USD 442.150.

Saksøker noterer at saksøkte i korrespondansen mellom partene har søkt å argumentere rettslige mot saksøkers adgang til å gjøre opsjonsavtalen gjeldende. Det kan imidlertid ikke anses godtgjort av saksøkte at vilkårene i opsjonsavtalen ikke var oppfylt. Saksøker er inneforstått med at "Aldoma" ikke oppfylte samtlige anbudskrav, men klargjorde dette overfor ONGC i anbudsdokumentasjonen. Anbudet ble således vunnet på bakgrunn av skipet som beskrevet i anbudsdokumentet. Hvorvidt skipet var egnet eller ikke, er et anliggende mellom saksøker og ONGC, såfremt skipet ikke benyttes i strid med hva som var avtalt mellom saksøker og saksøkte.

Saksøkte har således urettmessig og forsettelig hevet opsjonsavtalen. Ettersom dette kontraktsbruddet har medført et tap for saksøker, foreligger det således en erstatningsplikt for saksøkte.

Etter vanlige prinsipper for beregning av erstatning, skal saksøkers tap som oppstår som følge av kontraktsbruddet legges til grunn i en slik beregning. I denne forbindelse er det påregnelig for saksøkte at saksøkers tap tilsvarer den eventuelle fortjeneste han ville hatt under den nevnte avtale. Videre er det klart at tapet i forbindelse med det ovennevnte performance bond er et erstatningsbetingende krav.

### 4 PROSESSUELT

I tilfelle uteblivelse eller for sent innkommet tilsvare, bes uteblivelsesdom avsagt.

Det tas forbehold om ytterligere anførsler og bevis, herunder innkalling og stevning av vitner.



THOMMESSSEN

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Certified copy

Kristian Lindhartsen  
Advokatfullmektig

Det nedlegges følgende ærbødige

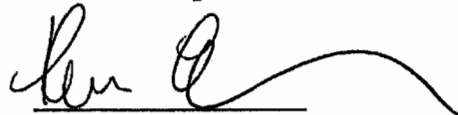
**p å s t a n d:**

- 1 North Offshore AS (org.nr. 929 987 020) dømmes til å betale Rolv Berg Drive AS et beløp oppad begrenset til USD 13.019.650, med tillegg av lovens forsinkelsesrenter til betaling finner sted.
- 2 North Offshore AS (org.nr. 929 987 020) dømmes til å betale til Rolv Berg Drive AS sakens omkostninger innen 14 dager med tillegg av lovens forsinkelsesrente fra forfall til betaling finner sted.

\* \* \*

Denne stevning i fem eksemplarer, hvorav to er sendt motpartens prosessfullmektig direkte.

Oslo, 7. november 2007  
Thommessen Krefting Greve Lund AS



Kristian Lindhartsen  
Advokatfullmektig

Bilag 1

Rett kopi, bekreftes  
Certified Copy  
Kristian Lindhartsen  
Advokatfullmektig

**CHARTER PARTY  
AHTS "ALDOMA"**

**RBD & TFDS (OH)**


**MARCH 2004 - MARCH 2007**

Issued by The Documentary Committee of  
The Baltic and International Maritime Council (BIMCO), Copenhagen  
(First edition published 1979)  
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The Baltic and International Maritime Council (BIMCO), Copenhagen  
September 1989

1. Place and date Tromsø 16 <sup>th</sup> of February 2004		UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS CODE NAME: "SUPPLYTIME 89"		 <b>PART I</b>	
2. Owners/Place of business (full style, address and telex/telefax no.) (Cl. 1(a)) TFDS Offshore AS Strandvegen 106 P.O. box 6155 9291 Tromsø Norway Phone: +47 77 67 99 50 Fax: +47 77 67 99 77 E-mail: offshore@tfds.no		3. Charterers/Place of business (full style, address and telex/telefax no.) (Cl. 1(a)) Rolv Berg Drive AS Sandre Tollbodgate 15 P.O. box 96 9251 Tromsø Norway Phone: +47 77 66 80 80 Fax: +47 77 60 89 E-mail: drive@rbdribe.com			
4. Vessel's name (Cl. 1(a)) AHTS Aldoma		5. Date of delivery (Cl. 2(a)) 20-31.03.2004		6. Cancelling date (Cl. 2(a) and (c)) 31.03.2004	
7. Port or place of delivery (Cl. 2(a)) Mumbai, India		8. Port or place redelivery/notice of redelivery (Cl. 2(d))  Mumbai, India (i) Port or place of redelivery  15 days (ii) Number of days' notice of redelivery			
9. Period of hire (Cl. 1(a)) 3 years firm		10. Extension of period of hire (optional) (Cl. 1(b))  (i) Period of extension 16 days (ii) Advance notice for declaration of option (days)			
11. Automatic extension period to complete voyage or well (Cl. 1(c))  As per work in progress. (i) Voyage or well (state which) 90 days. (ii) Maximum extension period (state number of days)		12. Mobilisation charge (lump sum and when due) (Cl. 2(b)(i))  Included in the vessel's dayrate for the first 3 years charter hire. - See Clause 37 (i) Lump sum NA (ii) When due			
14. Early termination of charter (state amount of hire payable) (Cl. 26(a)) As per state oil company rules and regulations (O.N.G.C.).		15. Number of days' notice of early termination (Cl. 26(a)) See box 14		16. Demobilisation charge (lump sum) (Cl. 2(a) and Cl. 26(a)) Included in vessel's dayrate for the first 3 years charter hire.	
13. Port or place of mobilisation (Cl. 2(b)(i)) Valletta, Malta.					

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*[Handwritten signature]*

## "SUPPLYTIME 89" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS

PART I

17. Area of operation (Cl. 8(a)) <b>The continental shelf of India.</b>		18. Employment of vessel restricted to (state nature of service(s)) (Cl. 8(a)) <b>Anchor handling, towage, fire fighting, supply services, mud services and any other services that the vessel may safely undertake to perform. Always within the vessel's capabilities and certification.</b>	
19. Charter hire (state rate and currency) (Cl. 10(a) and (d)) <b>USD 8,500,- + USD 700,- (mud installation) + USD 330,- (mob/demob).</b> <b>Total: USD 9,530,- per day the first three years.</b>		20. Extension hire (if agreed, state rate) (Cl. 10(b)) <b>USD 8,500,-</b>	
21. Invoicing for hire and other payments (Cl. 10(d)) (i) state whether to be issued in advance or arrears <b>In Arrears</b> (ii) state to whom to be issued if addressee other than stated in Box 2 <b>As per box 2</b> (iii) state to whom to be issued if addressee other than stated in Box 3		22. Payments (state mode and place of payment; also state beneficiary and bank account) (Cl. 10(e)) <b>As per owner's instruction</b> <b>To:</b> <b>SpareBank1 Nord-Norge</b> <b>Account no: 4729.01.10455</b> <b>Swift code: snwm022</b> <b>By:</b> <b>Swift transfer</b>	
23. Payment of hire, bunker invoices and disbursements for Charterers' account (state maximum number of days) (Cl. 10(g)) <b>35 banking days from date of invoice</b>		24. Interest rate payable (Cl. 10(e)) <b>NA</b>	25. Maximum audit period (Cl. 10(f)) <b>60 days</b>
26. Meals (state rate agreed) (Cl. 5(c)(i)) <b>USD 10,- per meal</b>	27. Accommodation (state rate agreed) (Cl. 5(c)(ii)) <b>USD 12,- per person</b>	28. Mutual Waiver of Recourse (optional, state whether applicable) (Cl. 12(i)) <b>Yes</b>	
29. Sublet (state amount of daily increment to charter hire) (Cl. 17(b)) <b>NA</b>		30. War (state name of country) (Cl. 19(a)) <b>Deleted</b>	
31. General average (place of settlement - only to be filled in if other than London) (Cl. 21) 		32. Breakdown (state period) (Cl. 28(b)(vi)) <b>30 days</b>	
33. Law and arbitration (state Cl. 31(a) or 31(b) or 31(c), as agreed; if Cl. 31(c) agreed also state place of arbitration) (Cl. 31) <b>Norwegian Law, arbitration in Oslo</b>		34. Numbers of additional clauses covering special provisions, if agreed <b>From Clause 37 to Clause 38</b>	

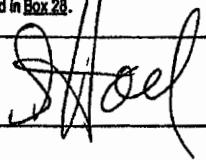
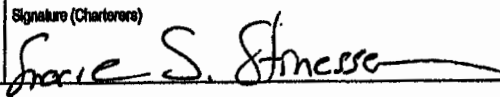
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## "SUPPLYTIME 89" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS

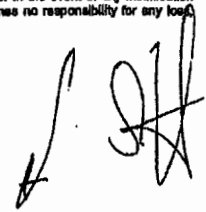
PART I

35. Names and addresses for notices and other communications required to be given by <u>the Owners (Cl. 28)</u> As per box 3	36. Names and addresses for notices and other communications required to be given by <u>the Charterers (Cl. 28)</u> As per box 2
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It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Charter consisting of PART I, including additional clauses if any agreed and stated in Box 34, and PART II as well as ANNEX "A" and ANNEX "B" as annexed to this Charter. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II and ANNEX "A" and ANNEX "B" to the extent of such conflict but no further. ANNEX "C" as annexed to this Charter is optional and shall only apply if expressly agreed and stated in Box 28.

Signature (Owners) 	Signature (Charterers) 
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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

1. **Period**
- (a) The Owners stated in Box 2 let and the Charterers stated in Box 3 hire the Vessel named in Box 4, as specified in ANNEX "A" (hereinafter referred to as "the Vessel"), for the period as stated in Box 5 from the time the Vessel is delivered to the Charterers.
- (b) Subject to Clause 10(b), the Charterers have the option to extend the Charter Period in direct continuation for the period stated in Box 10(b), but such an option must be declared in accordance with Box 10(b).
- (c) The Charter Period shall automatically be extended for the time required to complete the voyage or well (whichever is stated in Box 11(b)) in progress, such time not to exceed the period stated in Box 11(b).
2. **Delivery and Redelivery**
- (a) **Delivery.** - Subject to sub-clause (b) of this Clause the Vessel shall be delivered by the Owners free of cargo and with clean tanks at any time between the date stated in Box 5 and the date stated in Box 6 at the port or place stated in Box 7 where the Vessel can safely lie always afloat.
- (b) **Mobilisation.** - (i) The Charterers shall pay a lump sum as stated in Box 12 without discount by way of mobilisation charge in consideration of the Owners giving delivery at the port or place stated in Box 7. The mobilisation charge shall not be affected by any change in the port or place of mobilisation from that stated in Box 13.
- (ii) Should the Owners agree to the Vessel loading and transporting cargo and/or undertaking any other service for the Charterers en route to the port of delivery or from the port of redelivery, then all terms and conditions of this Charter Party shall apply to such loading and transporting and/or other service exactly as if performed during the Charter Period excepting only that any lump sum freight agreed in respect thereof shall be payable on shipment or commencement of the service as the case may be, the Vessel and/or goods lost or not lost.
- (c) **Cancelling.** - If the Vessel is not delivered by midnight local time on the cancelling date stated in Box 8, the Charterers shall be entitled to cancel this Charter Party. However, if despite the exercise of due diligence by the Owners, the Owners will be unable to deliver the Vessel by the cancelling date, they may give notice in writing to the Charterers at any time prior to the delivery date as stated in Box 5, and shall state in such notice the date by which they will be able to deliver the Vessel. The Charterers may within 24 hours of receipt of such notice give notice in writing to the Owners cancelling this Charter Party. If the Charterers do not give such notice, then the later date specified in the Owners' notice shall be substituted for the cancelling date for all the purposes of this Charter Party. In the event the Charterers cancel the Charter Party, it shall terminate on terms that neither party shall be liable to the other for any losses incurred by reason of the non-delivery of the Vessel or the cancellation of the Charter Party.
- (d) **Redelivery.** - The Vessel shall be redelivered on the expiration or earlier termination of this Charter Party free of cargo and with clean tanks at the port or place as stated in Box 8(i) or such other port or place as may be mutually agreed. The Charterers shall give not less than the number of days notice in writing of their intention to redeliver the Vessel, as stated in Box 8(ii).
- (e) **Demobilisation.** - The Charterers shall pay a lump sum without discount in the amount as stated in Box 16 by way of demobilisation charge which amount shall be paid on the expiration or on earlier termination of this Charter Party.
3. **Condition of Vessel**
- (a) The Owners undertake that at the date of delivery under this Charter Party the Vessel shall be of the description and classification as specified in ANNEX "A", attached hereto, and undertake to so maintain the Vessel during the period of service under this Charter Party.
- (b) The Owners shall before and at the date of delivery of the Vessel and throughout the Charter Period exercise due diligence to make and maintain the Vessel tight, staunch, strong in good order and condition and, without prejudice to the generality of the foregoing, in every way fit to operate effectively at all times for the services as stated in Clause 5.
4. **Survey**
- The Owners and the Charterers shall jointly appoint an independent surveyor for the purpose of determining and agreeing in writing the condition of the Vessel, any anchor handling and towing equipment specified in Section 5 of ANNEX "A", and the quality and quantity of fuel, lubricants and water at the time of delivery and redelivery hereunder. The Owners and the Charterers shall jointly share the time and expense of such surveys.
5. **Employment and Area of Operation**
- (a) The Vessel shall be employed in offshore activities which are lawful in accordance with the law of the place of the Vessel's flag and/or registration and of the place of operation. Such activities shall be restricted to the service(s) as stated in Box 18, and to voyages between any good and safe port or place and any place or offshore unit where the Vessel can safely lie always afloat within the Area of Operation as stated in Box 17 which shall always be within Institute Warranty Limits and which shall in no circumstances be exceeded without prior agreement and adjustment of the Hire and in accordance with such other terms as appropriate to be agreed; provided always that the Charterers do not warrant the safety of any such port or place or offshore unit but shall exercise due diligence in issuing their orders to the Vessel as if the Vessel were their own property and having regard to her capabilities and the nature of her employment. Unless otherwise agreed, the Vessel shall not be employed as a diving platform.
- (b) Relevant permission and licences from responsible authorities for the Vessel to enter, work in and leave the Area of Operation shall be obtained by the Charterers and the Owners shall assist, if necessary, in every way possible to secure such permission and licences.
- (c) **The Vessel's Space.** - The whole reach and burden and decks of the Vessel shall throughout the Charter Period be at the Charterers' disposal reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores. The Charterers shall be entitled to carry, so far as space is available and for their purposes in connection with their operations:
- (i) Persons other than crew members, other than fare paying, and for such purposes to make use of the Vessel's available accommodation not being used on the voyage by the Vessel's Crew. The Owners shall provide suitable provisions and requisites for such persons for which the Charterers shall pay at the rate as stated in Box 25 per meal and at the rate as stated in Box 27 per day for the provision of bedding and services for persons using berth accommodation.
- (ii) Lawful cargo whether carried on or under deck.
- (iii) Explosives and dangerous cargo, whether in bulk or packaged, provided proper notification has been given and such cargo is marked and packed in accordance with the national regulations of the Vessel and/or the International Maritime Dangerous Goods Code and/or other pertinent regulations. Failing such proper notification, marking or packing the Charterers shall indemnify the Owners in respect of any loss, damage or liability whatsoever and howsoever arising therefrom. The Charterers accept responsibility for any additional expenses (including reinstatement expenses) incurred by the Owners in relation to the carriage of explosives and dangerous cargo.
- (iv) Hazardous and noxious substances, subject to Clause 12(g), proper notification and any pertinent regulations.
- (d) **Laying-up of Vessel.** - The Charterers shall have the option of laying up the Vessel at an agreed safe port or place for all or any portion of the Charter Period in which case the Hire hereunder shall continue to be paid but, if the period of such lay-up exceeds 30 consecutive days there shall be credited against such Hire the amount which the Owners shall reasonably have saved by way of reduction in expenses and overheads as a result of the lay-up of the Vessel.
6. **Master and Crew**
- (a) (i) The Master shall carry out his duties promptly and the Vessel shall render all reasonable services within her capabilities by day and by night and at such times and on such schedules as the Charterers may reasonably require without any obligations of the Charterers to pay to the Owners or the Master, Officers or the Crew of the Vessel any excess or overtime payments. The Charterers shall furnish the Master with all instructions and sailing directions and the Master and Engineer shall keep full and correct logs accessible to the Charterers or their agents.
- (ii) The Master shall sign cargo documents as and in the form presented, the same, however, not to be Bills of Lading, but receipts which shall be non-negotiable documents and shall be marked as such. The Charterers shall indemnify the Owners against all consequences and liabilities arising from the Master, Officers or agents signing, under the direction of the Charterers, those cargo documents or other documents inconsistent with this Charter Party or from any irregularity in the papers supplied by the Charterers or their agents.
- (b) The Vessel's Crew if required by Charterers will connect and disconnect electric cables, fuel, water and pneumatic hoses when placed on board the Vessel in port as well as alongside the offshore units; will operate the machinery on board the Vessel for loading and unloading cargoes; and will hook and unhook cargo on board the Vessel when loading or discharging alongside offshore units. If the port regulations or the seamen and/or labour

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## PART II

**"SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels**

unions do not permit the Crew of the Vessel to carry out any of this work, then the Charterers shall make, at their own expense, whatever other arrangements may be necessary, always under the direction of the Master.	144	10. Hire and Payments	214
(c) If the Charterers have reason to be dissatisfied with the conduct of the Master or any Officer or member of the Crew, the Owners on receiving particulars of the complaint shall promptly investigate the matter and if the complaint proves to be well founded, the Owners shall as soon as reasonably possible make appropriate changes in the appointment.	145	(a) <u>Hire</u> . - The Charterers shall pay Hire for the Vessel at the rate stated in Box 19 per day or pro rata for part thereof from the time that the Vessel is delivered to the Charterers until the expiration or earlier termination of this Charter Party.	215
(d) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, their Master, Officers and Crew. The Vessel will be operated and the services hereunder will be rendered as requested by the Charterers, subject always to the exclusive right of the Owners or the Master of the Vessel to determine whether operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the Owners are deemed to be an independent contractor, the Charterers being concerned only with the results of the services performed.	146	(b) <u>Extension Hire</u> . - If the option to extend the Charter Period under Clause 1(b) is exercised, Hire for such extension shall, unless stated in Box 20, be mutually agreed between the Owners and the Charterers.	216
	147	(c) <u>Adjustment of Hire</u> . - The rate of hire shall be adjusted to reflect documented changes, after the date of entering into the Charter Party or the date of commencement of employment, whichever is earlier, in the Owners' costs arising from changes in the Charterers' requirements or regulations governing the Vessel and/or its Crew or this Charter Party.	217
	148	(d) <u>Invoicing</u> . - All invoices shall be issued in the contract currency stated in Box 18. In respect of reimbursable expenses incurred in currencies other than the contract currency, the rate of exchange into the contract currency shall be that quoted by the Central Bank of the country of such other currency as at the date of the Owners' invoice. Invoices covering Hire and any other payments due shall be issued monthly as stated in Box 21(i) or at the expiration or earlier termination of this Charter Party. Notwithstanding the foregoing, bunkers and lubricants on board at delivery shall be invoiced at the time of delivery.	218
	149	(e) <u>Payments</u> . - Payments of Hire, bunker invoices and disbursements for the Charterers' account shall be received within the number of days stated in Box 23 from the date of receipt of the invoice. Payment shall be made in the contract currency in full without discount to the account stated in Box 22. However any advances for disbursements made on behalf of and approved by the Owners may be deducted from Hire due.	219
	150	If payment is not received by the Owners within 5 banking days following the due date the Owners are entitled to charge interest at the rate stated in Box 24 on the amount outstanding from and including the due date until payment is received.	220
	151	Where an invoice is disputed, the Charterers shall in any event pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed portion provided that such portion is reasonably disputed and the Charterers specify such reason. Interest will be chargeable at the rate stated in Box 24 on such disputed amounts where resolved in favour of the Owners. Should the Owners prove the validity of the disputed portion of the invoice, balance payment shall be received by the Owners within 5 banking days after the dispute is resolved. Should the Charterers' claim be valid, a corrected invoice shall be issued by the Owners.	221
	152	In default of payment as herein specified, the Owners may require the Charterers to make payment of the amount due within 5 banking days of receipt of notification from the Owners; failing which the Owners shall have the right to withdraw the Vessel without prejudice to any claim the Owners may have against the Charterers under this Charter Party.	222
	153	While payment remains due the Owners shall be entitled to suspend the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and Hire shall continue to accrue and any extra expenses resulting from such suspension shall be for the Charterers' account.	223
	154	(f) <u>Audit</u> . - The Charterers shall have the right to appoint an independent chartered accountant to audit the Owners' books directly related to work performed under this Charter Party at any time after the conclusion of the Charter Party, up to the expiry of the period stated in Box 25, to determine the validity of the Owners' charges hereunder. The Owners undertake to make their records available for such purposes at their principal place of business during normal working hours. Any discrepancies discovered in payments made shall be promptly resolved by invoice or credit as appropriate.	224
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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

the request of the Charterers;	287	arising out of or in connection with such loss, damage, liability, personal	354
(iv) detention in consequence of being driven into port or to anchorage	288	injury or death:	355
through stress of weather or trading to shallow harbours or to river or	289	(c) <i>Consequential Damages</i> . - Neither party shall be liable to the other for, and	356
ports with bars or suffering an accident to her cargo, when the expenses	290	each party hereby agrees to protect, defend and indemnify the other against,	357
resulting from such detention shall be for the Charterers' account	291	any consequential damages whatsoever arising out of or in connection with	358
howsoever incurred;	292	the performance or non-performance of this Charter Party, including, but not	359
(v) detention or damage by ice;	293	limited to, loss of use, loss of profits, shut-in or loss of production and cost of	360
(vi) any act or omission of the Charterers, their servants or agents.	294	insurance.	361
(b) <i>Liability for Vessel not Working</i> . - The Owners' liability for any loss,	295	(d) <i>Limitations</i> . - Nothing contained in this Charter Party shall be construed or	362
damage or delay sustained by the Charterers as a result of the Vessel being	296	held to deprive the Owners or the Charterers, as against any person or party,	363
prevented from working by any cause whatsoever shall be limited to	297	including as against each other, of any right to claim limitation of liability	364
suspension of hire.	298	provided by any applicable law, statute or convention, save that nothing in	365
(c) <i>Maintenance and Drydocking</i> . - Notwithstanding sub-clause (a) hereof, the	299	this Charter Party shall create any right to limit liability. Where the Owners or	366
Charterers shall grant the Owners a maximum of 24 hours on hire, which shall	300	the Charterers may seek an indemnity under the provisions of this Charter	367
be cumulative, per month or pro rata for part of a month from the	301	Party or against each other in respect of a claim brought by a third party, the	368
commencement of the Charter Period for maintenance and repairs including	302	Owners or the Charterers shall seek to limit their liability against such third	369
drydocking (hereinafter referred to as "maintenance allowance"). The	303	party.	370
accumulated maintenance days shall however at any time not exceed six (6)		(e) <i>Himalaya Clause</i> . - (i) All exceptions, exemptions, defences, immunities,	371
days. If the accumulated time is not utilized within six (6) months it would		limitations of liability, indemnities, privileges and conditions granted or	372
automatically lapse and will not be carried forward.		provided by this Charter Party or by any applicable statute, rule or regulation	373
The Vessel shall be drydocked at regular intervals. The Charterers shall place	304	for the benefit of the Charterers shall also apply to and be for the benefit of the	374
the Vessel at the Owners' disposal clean of cargo, at a port (to be nominated	305	Charterers' parent, affiliated, related and subsidiary companies; the	375
by the Owners at a later date) having facilities suitable to the Owners for the	306	Charterers' contractors, sub-contractors, clients, joint venturers and joint	376
purpose of such drydocking.	307	interest owners (always with respect to the job or project on which the Vessel	377
During reasonable voyage-time taken in-transit between such port and Area	308	is employed); their respective employees and their respective underwriters.	378
of Operation the Vessel shall be on hire and such time shall not be counted	309	(ii) All exceptions, exemptions, defences, immunities, limitations of liability,	379
against the accumulated maintenance allowance.	310	indemnities, privileges and conditions granted or provided by this Charter	380
Hire shall be suspended during any time taken in maintenance repairs and	311	Party or by any applicable statute, rule or regulation for the benefit of the	381
drydocking in excess of the accumulated maintenance allowance.	312	Owners shall also apply to and be for the benefit of the Owners' parent,	382
In the event of less time being taken by the Owners for repairs and drydocking	313	affiliated, related and subsidiary companies, the Owners' sub-contractors,	383
or, alternatively, the Charterers not making the Vessel available for all or part	314	the Vessel, its Master, Officers and Crew, its registered owner, its operator, its	384
of this time, the Charterers shall, upon expiration or earlier termination of the	315	demise charterer(s), their respective employees and their respective	385
Charter Party, pay the equivalent of the daily rate of Hire then prevailing in	316	underwriters.	386
addition to Hire otherwise due under this Charter Party in respect of all such	317	(iii) The Owners or the Charterers shall be deemed to be acting as agent or	387
time not so taken or made available.	318	trustee of and for the benefit of all such persons and parties set forth above,	388
Upon commencement of the Charter Period, the Owners agree to furnish the	319	but only for the limited purpose of contracting for the extension of such	389
Charterers with the Owners' proposed drydocking schedule and the	320	benefits to such persons and parties.	390
Charterers agree to make every reasonable effort to assist the Owners in	321	(f) <i>Mutual Waiver of Recourse (Optional, only applicable if stated in Box 28, but</i>	391
adhering to such predetermined drydocking schedule for the Vessel. It is	322	regardless of whether this option is exercised the other provisions of Clause 12	392
understood that Owner and Charter that regular dry-docking is not		shall apply and shall be paramount)	393
scheduled to take place during the first period of Charter Hire, that is during		In order to avoid disputes regarding liability for personal injury or death of	394
the first 36 months.		employees or for loss of or damage to property, the Owners and the	395
12. <i>Liabilities and Indemnities</i>	323	Charterers have entered into, or by this Charter Party agree to enter into, an	396
(a) <i>Owners</i> . - Notwithstanding anything else contained in this Charter Party	324	Agreement for Mutual Indemnity and Waiver of Recourse (in a form	397
excepting Clauses 5(c)(iii), 7(d), 8(b), 12(a), 15(c) and 21, the Charterers shall	325	substantially similar to that specified in ANNEX "C") between the Owners, the	398
not be responsible for loss of or damage to the property of the Owners or of	326	Charterers and the various contractors and sub-contractors of the Charterers.	399
their contractors and sub-contractors, including the Vessel, or for personal	327	(g) <i>Hazardous and Noxious Substances</i> . - Notwithstanding any other	400
injury or death of the employees of the Owners or of their contractors and	328	provision of this Charter Party to the contrary, the Charterers shall always be	401
sub-contractors, arising out of or in any way connected with the performance	329	responsible for any losses, damages or liabilities suffered by the Owners,	402
of this Charter Party, even if such loss, damage, injury or death is caused	330	their employees, contractors or sub-contractors, by the Charterers, or by	403
wholly or partially by the act, neglect, or default of the Charterers, their	331	third parties, with respect to the Vessel or other property, personal injury or	404
employees, contractors or sub-contractors, and even if such loss, damage,	332	death, pollution or otherwise, which losses, damages or liabilities are caused,	405
injury or death is caused wholly or partially by unseaworthiness of any vessel;	333	directly or indirectly, as a result of the Vessel's carriage of any hazardous and	406
and the Owners and their contractors and sub-contractors shall indemnify,	334	noxious substances in whatever form as ordered by the Charterers, and the	407
protect, defend and hold harmless the		Charterers shall defend, indemnify the Owners and hold the Owners harmless	408
Charterers from any and against all claims, costs, expenses, actions,	335	for any expense, loss or liability whatsoever or howsoever arising with	409
proceedings, suits, demands and liabilities whatsoever arising out of or in	336	respect to the carriage of hazardous or noxious substances.	410
connection with such loss, damage, personal injury or death.	337		
(b) <i>Charterers</i> . - Notwithstanding anything else contained in this Charter	338	13. <i>Pollution</i>	411
Party excepting Clause 21, the Owners shall not be responsible for loss of,	339	(a) Except as otherwise provided for in Clause 15(c)(iii), the Owners shall be	412
damage to, or any liability arising out of anything towed by the Vessel, any	340	liable for, and agree to indemnify, defend and hold harmless the Charterers	413
cargo laden upon or carried by the Vessel or her tow, the property of the	341	against, all claims, costs, expenses, actions, proceedings, suits, demands	414
Charterers or of their contractors and sub-contractors, including their	342	and liabilities whatsoever arising out of actual or potential pollution damage	415
offshore units, or for personal injury or death of the employees of the	343	and the cost of cleanup or control thereof arising from acts or omissions of	416
Charterers or of their contractors and sub-contractors (other than the Owners	344	the Owners or their personnel which cause or allow discharge, spills or leaks	417
and their contractors and sub-contractors) or of anyone on board anything	345	from the Vessel, except as may emanate from cargo thereon or therefrom.	418
towed by the Vessel, arising out of or in any way connected with the	346	(b) The Charterers shall be liable for and agree to indemnify, defend and hold	419
performance of this Charter Party, even if such loss, damage, liability, injury	347	harmless the Owners from all claims, costs, expenses, actions, proceedings,	420
or death is caused wholly or partially by the act, neglect or default of the	348	suits, demands, liabilities, loss or damage whatsoever arising out of or	421
Owners, their employees, contractors or sub-contractors, and even if such	349	resulting from any other actual or potential pollution damage, even where	422
loss, damage, liability, injury or death is caused wholly or partially by the	350	caused wholly or partially by the act, neglect or default of the Owners, their	423
unseaworthiness of any vessel; and the Charterers and their contractors and	351	employees, contractors or sub-contractors or by the unseaworthiness of the	424
sub-contractors shall indemnify, protect,		Vessel.	425
defend and hold harmless the Owners from any and against all claims, costs,	352		
expenses, actions, proceedings, suits, demands, and liabilities whatsoever	353		

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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

<b>14. Insurance</b>	426	The Owners shall have a lien upon all cargoes for all claims against the	498
(a) (i) The Owners shall procure and maintain in effect for the duration of this	427	Charterers under this Charter Party and the Charterers shall have a lien on the	499
Charter Party, with reputable insurers, the insurance set forth in <u>ANNEX "B"</u> .	428	Vessel for all monies paid in advance and not earned. The Charterers will not	500
Policy limits shall not be less than those indicated. Reasonable deductibles	429	suffer, nor permit to be continued, any lien or encumbrance incurred by them	501
are acceptable and shall be for the account of the Owners.	430	or their agents, which might have priority over the title and interest of the	502
(ii) The Charterers shall upon request be named as co-insured. The Owners	431	Owners in the Vessel. Except as provided in <u>Clause 12</u> , the Charterers shall	503
shall upon request cause insurers to waive subrogation rights against the	432	indemnify and hold the Owners harmless against any lien of whatsoever	504
Charterers (as encompassed in <u>Clause 12(e)(i)</u> ). Co-insurance and/or	433	nature arising upon the Vessel during the Charter Period while she is under	505
wavers of subrogation shall be given only insofar as these relate to liabilities	434	the control of the Charterers, and against any claims against the Owners	506
which are properly the responsibility of the Owners under the terms of this	435	indemnity out of the operation of the Vessel by the Charterers or out of any	507
Charter Party.	436	neglect of the Charterers in relation to the Vessel or the operation thereof.	508
(b) The Owners shall upon request furnish the Charterers with certificates of	437	Should the Vessel be arrested by reason of claims or liens arising out of her	509
insurance which provide sufficient information to verify that the Owners have	438	operation hereunder, unless brought about by the act or neglect of the	510
complied with the insurance requirements of this Charter Party.	439	Owners, the Charterers shall at their own expense take all reasonable steps to	511
(c) If the Owners fail to comply with the aforesaid insurance requirements, the	440	secure that within a reasonable time the Vessel is released and at their own	512
Charterers may, without prejudice to any other rights or remedies under this	441	expense put up bail to secure release of the Vessel.	513
Charter Party, purchase similar coverage and deduct the cost thereof from	442		
any payment due to the Owners under this Charter Party.	443		
<b>15. Saving of Life and Salvage</b>	444	<b>17. Sublet and Assignment</b>	514
(a) The Vessel shall be permitted to deviate for the purpose of saving life at	445	(a) <u>Charterers</u> . - The Charterers shall have the option of subletting, assigning	515
sea without prior approval or of notice to the Charterers and without loss of	446	or leasing the Vessel to any person or company not competing with the	516
Hire provided however that notice of such deviation is given as soon as	447	Owners, subject to the Owners' prior approval which shall not be	517
possible.	448	unreasonably withheld, upon giving notice in writing to the Owners, but the	518
(b) Subject to the Charterers' consent, which shall not be unreasonably	449	original Charterers shall always remain responsible to the Owners for due	519
withheld, the Vessel shall be at liberty to undertake attempts at salvage, it	450	performance of the Charter Party and contractors of the person or company	520
being understood that the Vessel shall be off hire from the time she leaves	451	taking such subletting, assigning or loan shall be deemed contractors of the	521
port or commences to deviate and she shall remain off-hire until she is again	452	Charterers for all the purposes of this Charter Party. The Owners make it a	522
in every way ready to resume the Charterers' service at a position which is not	453	condition of such consent that additional Hire shall be paid as agreed	523
less favourable to the Charterers than the position at the time of leaving port	454	between the Charterers and the Owners having regard to the nature and	524
or deviating for the salvage services.	455	period of any intended service of the Vessel.	525
All salvage monies earned by the Vessel shall be divided equally between the	456	(b) If the Vessel is sublet, assigned or loaned to undertake rig anchor	526
Owners and the Charterers, after deducting the Master's, Officers' and Crew's	457	handling and/or towing operations connected with equipment, other than that	527
share, legal expenses, value of fuel and lubricants consumed, Hire of the	458	used by the Charterers, then a daily increment to the Hire in the amount as	528
Vessel lost by the Owners during the salvage, repairs to damage sustained, if	459	stated in <u>Box 29</u> or pro-rata shall be paid for the period between departure for	529
any, and any other extraordinary loss or expense sustained as a result of the	460	such operations and return to her normal duties for the Charterers.	530
salvage.	461	(c) <u>Owners</u> . - The Owners may not assign or transfer any part of this Charter	531
The Charterers shall be bound by all measures taken by the Owners in order	462	Party without the written approval of the Charterers, which approval shall not	532
to secure payment of salvage and to fix its amount.	463	be unreasonably withheld.	533
(c) The Owners shall waive their right to claim any award for salvage	464	Approval by the Charterers of such subletting or assignment shall not relieve	534
performed on property owned by or contracted to the Charterers, always	465	the Owners of their responsibility for due performance of the part of the	535
provided such property was the object of the operation the Vessel was	466	services which is sublet or assigned.	536
chartered for, and the Vessel shall remain on hire when rendering salvage	467		
services to such property. This waiver is without prejudice to any right the	468	<b>18. Substitute Vessel</b>	537
Vessel's Master, Officers and Crew may have under any title.	469	The Owners shall be entitled at any time, whether before delivery or at any	538
If the Owners render assistance to such property in distress on the basis of	470	other time during the Charter Period, to provide a substitute vessel, subject to	539
"no claim for salvage", then, notwithstanding any other provisions contained	471	the Charterers' prior approval which shall not be unreasonably withheld.	540
in this Charter Party and even in the event of neglect or default of the Owners,	472		
Master, Officers or Crew:	473	<b>19. War</b>	541
(i) The Charterers shall be responsible for and shall indemnify the Owners	474	(a) Unless the consent of the Owners be first obtained, the Vessel shall not be	542
against payments made, under any legal rights, to the Master, Officers	475	ordered nor continue to any port or place or on any voyage nor be used on	543
and Crew in relation to such assistance.	476	any service which will bring the Vessel within a zone which is dangerous as	544
(ii) The Charterers shall be responsible for and shall reimburse the Owners	477	a result of any actual or threatened act of war, war, hostilities, warlike	545
for any loss or damage sustained by the Vessel or her equipment by	478	operations, acts of piracy or of hostility or malicious damage against this or	546
reason of giving such assistance and shall also pay the Owners' additional	479	any other vessel or its cargo by any person, body or state whatsoever,	547
expenses thereby incurred.	480	revolution, civil war, civil commotion or the operation of international law, nor	548
(iii) The Charterers shall be responsible for any actual or potential spill,	481	be exposed in any way to any risks or penalties whatsoever consequent upon	549
seepage and/or emission of any pollutant howsoever caused occurring	482	the imposition of sanctions, nor carry any goods that may in any way expose	550
within the offshore site and any pollution resulting therefrom	483	her to any risks of seizure, capture, penalties or any other interference of any	551
wheresoever it may occur and including but not limited to the cost of	484	kind whatsoever by the belligerent or fighting powers or parties or by any	552
such measures as are reasonably necessary to prevent or mitigate	485	government or rulers.	553
pollution damage, and the Charterers shall indemnify the Owners	486	(b) Should the Vessel approach or be brought or ordered within such zone, or	554
against any liability, cost or expense arising by reason of such actual or	487	be exposed in any way to the said risks, (i) the Owners shall be entitled from	555
potential spill, seepage and/or emission.	488	time to time to insure their interest in the Vessel for such terms as they deem	556
(iv) The Vessel shall not be off-hire as a consequence of giving such	489	fit up to its open market value and also in the Hire against any of the risks	557
assistance, or effecting repairs under sub-paragraph (ii) of this sub-	490	likely to be involved thereby, and the Charterers shall make a refund on	558
clause, and time taken for such repairs shall not count against time	491	demand of any additional premium thereby incurred, and (ii) notwithstanding	559
granted under <u>Clause 11(c)</u> .	492	the terms of <u>Clause 11</u> Hire shall be payable for all time lost including any loss	560
(v) The Charterers shall indemnify the Owners against any liability, cost	493	owing to loss of or injury to the Master, Officers, Crew or passengers or to	561
and/or expense whatsoever in respect of any loss of life, injury, damage	494	refusal by any of them to proceed to such zone or to be exposed to such risks.	562
or other loss to person or property howsoever arising from such	495	(c) In the event of additional insurance premiums being incurred or the wages	563
assistance.	496	of the Master and/or Officers and/or Crew and/or the cost of provisions and/	564
	497	or stores for deck and/or engine room being increased by reason of or during	565
		the existence of any of the matters mentioned in sub-clause (a) the amount of	566
		any additional premium and/or increase shall be added to the Hire, and paid	567
		by the Charterers on production of the Owners' account therefor, such	568
<b>16. Lien</b>			

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## PART II

### "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

account being rendered monthly.	569	management of the Vessel, the Charterers will indemnify the Owners against	640
(d) The Vessel shall have liberty to comply with any orders or directions as to	570	all loss or liability to the other or non-carrying ship or her owners insofar as	641
departure, arrival, routes, ports of call, stoppages, destination, delivery or in	571	such loss or liability represent loss of or damage to, or any claim whatsoever	642
any other way whatsoever given by the government of the nation under whose	572	of the owners of any goods carried under this Charter Party paid or payable by	643
flag the Vessel sails or any other government or any person (or body) acting	573	the other or non-carrying ship or her owners to the owners of the said goods	644
or purporting to act with the authority of such government or by any	574	and set-off, recouped or recovered by the other or non-carrying ship or her	645
committees or person having under the terms of the war risks insurance on the	575	owners as part of their claim against the Vessel or the Owners. The foregoing	646
Vessel the right to give any such orders or directions.	576	provisions shall also apply where the owners, operators or those in charge of	647
(e) In the event of the outbreak of war (whether there be a declaration of war or	577	any ship or ships or objects other than or in addition to the colliding ships or	648
not) between any of the countries stated in Box 30 or in the event of the nation	578	objects are at fault in respect of a collision or contact.	649
under whose flag the Vessel sails becoming involved in war (whether there be	579		
a declaration of war or not) either the Owners or the Charterers may terminate	580	<b>23. Structural Alterations and Additional Equipment</b>	650
this Charter Party, whereupon the Charterers shall redeliver the Vessel to the	581	The Charterers shall have the option of, at their expense, making structural	651
Owners in accordance with <u>PART I</u> if it has cargo on board after discharge	582	alterations to the Vessel or installing additional equipment with the written	652
thereof at destination or, if debarrued under this Clause from reaching or	583	consent of the Owners which shall not be unreasonably withheld but unless	653
entering it, at a near open and safe port or place as directed by the Owners, or	584	otherwise agreed the Vessel is to be redelivered reinstated, at the Charterers'	654
if the Vessel has no cargo on board, at the port or place at which it then is or if	585	expense, to her original condition. The Vessel is to remain on hire during any	655
at sea at a near, open and safe port or place as directed by the Owners. In all	586	period of these alterations or reinstatement. The Charterers, unless otherwise	656
cases Hire shall continue to be paid and, except as aforesaid, all other	587	agreed, shall be responsible for repair and maintenance of any such	657
provisions of this Charter Party shall apply until redelivery.	588	alteration or additional equipment.	658
(f) If in compliance with the provisions of this Clause anything is done or is not	589		
done, such shall not be deemed a deviation.	590	<b>24. Health and Safety</b>	659
The Charterers shall procure that all Bills of Lading (if any) issued under this	591	The Owners shall comply with and adhere to all applicable international,	660
Charter Party shall contain the stipulations contained in sub-clauses (a), (d)	592	national and local regulations pertaining to health and safety, and such	661
and (f) of this Clause.	593	Charterers' instructions as may be appended hereto.	662
<b>20. Excluded Ports</b>	594	<b>25. Taxes</b>	663
(a) The Vessel shall not be ordered to nor bound to enter without the Owners'	595	Each party shall pay taxes due on its own profit, income and personnel. The	664
written permission (a) any place where fever or epidemics are prevalent or to	596	Charterers shall pay all other taxes and dues arising out of the operation or	665
which the Master, Officers and Crew by law are not bound to follow the Vessel;	597	use of the Vessel during the Charter Period.	666
(b) any ice-bound place or any place where lights, lightships, marks and	598	In the event of change in the Area of Operation or change in local regulation	667
buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival	599	and/or interpretation thereof, resulting in an unavoidable and documented	668
or where there is risk that ordinarily the Vessel will not be able on account of	600	change of the Owners' tax liability after the date of entering into the Charter	669
ice to reach the place or to get out after having completed her operations. The	601	Party or the date of commencement of employment, whichever is the earlier,	670
Vessel shall not be obliged to force ice nor to follow an icebreaker. If, on	602	Hire shall be adjusted accordingly.	671
account of ice, the Master considers it dangerous to remain at the loading or	603		
discharging place for fear of the Vessel being frozen in and/or damaged he	604	<b>26. Early Termination</b>	672
has liberty to sail to a convenient open place and await the Charterers' fresh	605	(a) <u>For Charterers' Convenience</u> - The Charterers may terminate this Charter	673
instructions.	606	Party at any time by giving the Owners written notice as stated in Box 15 and	674
(b) Should the Vessel approach or be brought or ordered within such place,	607	by paying the settlement stated in Box 14 and the demobilisation charge	675
or be exposed in any way to the said risks, the Owners shall be entitled from	608	stated in Box 16, as well as Hire or other payments due under the Charter	676
time to time to insure their interests in the Vessel and/or Hire against any of	609	Party.	677
the risks likely to be involved thereby on such terms as they shall think fit, the	610	(b) <u>For Cause</u> - If either party becomes informed of the occurrence of any	678
Charterers to make a refund to the Owners of the premium on demand.	611	event described in this Clause that party shall so notify the other party	679
Notwithstanding the terms of <u>Clause 11</u> Hire shall be paid for all time lost	612	promptly in writing and in any case within 3 days after such information is	680
including any lost owing to loss of or sickness or injury to the Master, Officers,	613	received. If the occurrence has not ceased within 3 days after such	681
Crew or passengers or to the action of the Crew in refusing to proceed to such	614	notification has been given, this Charter Party may be terminated by either	682
place or to be exposed to such risks.	615	party, without prejudice to any other rights which either party may have, under	683
		any of the following circumstances:	684
<b>21. General Average and New Jason Clause</b>	616	(i) <u>Requisition</u> - If the government of the state of registry and/or the flag of	685
General Average shall be adjusted and settled in London unless otherwise	617	the Vessel, or any agency thereof, requisitions for hire or title or	686
stated in Box 31, according to York/Antwerp Rules, 1974, as may be amended.	618	otherwise takes possession of the Vessel during the Charter Period.	687
Hire shall not contribute to General Average. Should adjustment be made in	619	(ii) <u>Confiscation</u> - If any government, individual or group, whether or not	688
accordance with the law and practice of the United States of America, the	620	purporting to act as a government or on behalf of any government,	689
following provision shall apply:	621	confiscates, requisitions, expropriates, seizes or otherwise takes	690
"In the event of accident, danger, damage or disaster before or after the	622	possession of the Vessel during the Charter Period.	691
commencement of the voyage, resulting from any cause whatsoever, whether	623	(iii) <u>Bankruptcy</u> - In the event of an order being made or resolution passed	692
due to negligence or not, for which, or for the consequences of which, the	624	for the winding up, dissolution, liquidation or bankruptcy of either party	693
Owners are not responsible, by statute, contract or otherwise, the cargo,	625	(otherwise than for the purpose of reconstruction or amalgamation) or if	694
shippers, consignees or owners of the cargo shall contribute with the Owners	626	a receiver is appointed or if it suspends payment or ceases to carry on	695
in General Average to the payment of any sacrifices, loss or expenses of a	627	business.	696
General Average nature that may be made or incurred and shall pay salvage	628	(iv) <u>Loss of Vessel</u> - If the Vessel is lost, actually or constructively, or	697
and special charges incurred in respect of the cargo.	629	missing, unless the Owners provide a substitute vessel pursuant to	698
If a sailing vessel is owned or operated by the Owners, salvage shall be paid	630	Clause 18. In the case of termination, Hire shall cease from the date the	699
for as fully as if the said sailing vessel or vessels belonged to strangers. Such	631	Vessel was lost or, in the event of a constructive total loss, from the date	700
deposit as the Owners, or their agents, may deem sufficient to cover the	632	of the event giving rise to such loss. If the date of loss cannot be	701
estimated contribution of the cargo and any salvage and special charges	633	ascertained or the Vessel is missing, payment of Hire shall cease from	702
thereon shall, if required, be made by the cargo, shippers, consignees	634	the date the Vessel was last reported.	703
or owners of the cargo to the Owners before delivery."	635	(v) <u>Breakdown</u> - If, at any time during the term of this Charter Party, a	704
		breakdown of the Owners' equipment or Vessel results in the Owners'	705
<b>22. Both-to-Blame Collision Clause</b>	636	being unable to perform their obligations hereunder for a period	706
If the Vessel comes into collision with another ship as a result of the	637	exceeding that stated in Box 32, unless the Owners provide a substitute	707
negligence of the other ship and any act, neglect or default of the Master,	638	vessel pursuant to <u>Clause 18</u> .	708
mariner, pilot or the servants of the Owners in the navigation or the	639	(vi) <u>Force Majeure</u> - If a force majeure condition as defined in <u>Clause 27</u>	709

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prevails for a period exceeding 15 consecutive days.	710	within 14 days, failing which the arbitrator already appointed shall act as sole	761
(vi) <i>Default</i> - If either party is in repudiatory breach of its obligations	711	arbitrator. If two arbitrators properly appointed shall not agree they shall	762
hereunder.	712	appoint an umpire whose decision shall be final.	763
Termination as a result of any of the above mentioned causes shall not relieve	713	3) <del>(b) Should any dispute arise out of this Charter Party, the matter in dispute</del>	764
the Charterers of any obligation for Hire and any other payments due.	714	shall be referred to three persons at New York, one to be appointed by each of	765
		the parties hereto, and the third by the two so chosen; their decision or that of	766
		any two of them shall be final, and for purpose of enforcing any award, this	767
		agreement may be made a rule of the Court. The arbitrators shall be members	768
		of the Society of Maritime Arbitrators, Inc. of New York and the proceedings	769
		shall be conducted in accordance with the rules of the Society.	770
		3) <del>(c) Any dispute arising out of this Charter Party shall be referred to arbitration</del>	771
		at the place stated in <del>Box 33</del> subject to the law and procedures applicable	772
		there.	773
		<del>(d) If Box 33 in PART I is not filled in, sub-clause (a) of this Clause shall apply.</del>	774
		3) <del>(a), (b) and (c) are alternatives; state alternative agreed in Box 33</del>	775
		32. <b>Entire Agreement</b>	788
		This is the entire agreement of the parties, which supersedes all previous	787
		written or oral understandings and which may not be modified except by a	788
		written amendment signed by both parties.	789
		33. <b>Severability Clause</b>	770
		If any portion of this Charter Party is held to be invalid or unenforceable for	771
		any reason by a court or governmental authority of competent jurisdiction,	772
		then such portion will be deemed to be stricken and the remainder of this	773
		Charter Party shall continue in full force and effect.	774
		34. <b>Demise</b>	775
		Nothing herein contained shall be construed as creating a demise of	776
		the Vessel to the Charterers.	777
		35. <b>Definitions</b>	778
		"Well" is defined for the purposes of this Charter Party as the time required to	779
		drill, test, complete and/or abandon a single borehole including any side-	780
		track thereof.	781
		"Offshore unit" is defined for the purposes of this Charter Party as any vessel,	782
		offshore installation, structure and/or mobile unit used in offshore	783
		exploration, construction, pipe-laying or repair, exploitation or production.	784
		"Offshore site" is defined for the purposes of this Charter Party as the area	785
		within three nautical miles of an "offshore unit" from or to which the Owners	786
		are requested to take their Vessel by the Charterers.	787
		"Employees" is defined for the purposes of this Charter Party as employees,	788
		directors, officers, servants, agents or invitees.	789
		36. <b>Headings</b>	790
		The headings of this Charter Party are for identification only and shall not be	791
		deemed to be part hereof or be taken into consideration in the interpretation	792
		or construction of this Charter Party.	793
27. <b>Force Majeure</b>	716		
Neither the Owners nor the Charterers shall be liable for any loss, damages or	716		
delay or failure in performance hereunder resulting from any force majeure	717		
event, including but not limited to acts of God, fire, action of the elements,	718		
epidemics, war (declared or undeclared), warlike actions, insurrection,	719		
revolution or civil strife, piracy, civil war or hostile action, strikes or	720		
differences with workmen (except for disputes relating solely to the Owners'	721		
or the Charterers' employees), acts of the public enemy, federal or state laws,	722		
rules and regulations of any governmental authorities having or asserting	723		
jurisdiction in the premises or of any other group, organisation or informal	724		
association (whether or not formally recognised as a government), and any	725		
other cause beyond the reasonable control of either party which makes	726		
continuance of operations impossible.	727		
28. <b>Notices and Invoices</b>	728		
Notices and invoices required to be given under this Charter Party shall be	729		
given in writing to the addressees stated in <del>Boxes 21, 25 and 36</del> as appropriate.	730		
29. <b>Wreck Removal</b>	731		
If the Vessel sinks and becomes a wreck and an obstruction to navigation and	732		
has to be removed upon request by any compulsory law or authority having	733		
jurisdiction over the area where the wreck is placed, the Owners shall be	734		
liable for any and all expenses in connection with the raising, removal,	735		
destruction, lighting or marking of the wreck.	736		
30. <b>Confidentiality</b>	737		
All information or data obtained by the Owners in the performance of this	738		
Charter Party is the property of the Charterers, is confidential and shall not be	739		
disclosed without the prior written consent of the Charterers. The Owners	740		
shall use their best efforts to ensure that the Owners, any of their	741		
sub-contractors, and employees and agents thereof shall not disclose any	742		
such information or data.	743		
31. <b>Law and Arbitration</b>	744		
"(a) This Charter Party shall be governed by English-Norwegian law and any	745		
dispute			
arising out of this Charter Party shall be referred to arbitration in London Oslo,	746		
one			
arbitrator being appointed by each party, in accordance with the Norwegian	747		
Arbitration			
Acts 1960 and 1979 or any statutory modification or re-enactment thereof for	748		
the time being in force. On the receipt by one party of the nomination in	749		
writing of the other party's arbitrator that party shall appoint their arbitrator	750		



**ADDITIONAL CLAUSES**

**"SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels**

**37. Cost of Mobilization and De-Mobilization**

It is agreed between the parties that the cost of mobilization and de-mobilization shall be included in the vessel's day-rate for the first three years of operation, as per Box 19. There shall therefore be no other claims relating to mobilization and de-mobilization of the vessel.

**38. Scope of Work and Local Personnel**

The vessel shall perform it's duties on both the west and East coast of India as per ~~the scope of work~~ may be directed by ONGC for these two Areas in operation. Roiv Berg Drive will arrange for local support and agency at the place(s) of deployment and further supply TFDS Offshore AS with qualified local marine crew as per the decisions of the Vessel Master and TFDS. The local marine crew shall be paid locally by RBD and RBD shall be responsible for the deduction of local taxes. RBD to invoice TFDS accordingly at the end of each month as per separate agreement.

NA!

Only within the  
vessel's capabilities and  
certification.

SH





## ANNEXURE - A

## Technical Specification of AHTS of not less than 9600 BHP - 1 No.



Sr.No	Parameter	ONGC Requirement	Bidder Specification
<b>1</b>	<b>GENERAL</b>		
1,1	Name of Vessel		MV ALDOMA
1,2	Name of owner		DESPOIMENT OWNER T.F.D.S. OFFSHORE AS
1,3	Flag		BAHAMAS
1,4	Port of registry		NASSAU
1,5	Place of build		NORWAY
1,6	Year of build		1983
1,7	Name of yard		Framnes Metaniske, Sandefjord
1,8	Classification	ABS/DNV/EV/LRS/IRS/GL	DNV * 1A1 Δ Tug&Supply Vessel SF EO FIFI II ICE C
1,9	call sign/official No.		C6RD9
<b>2</b>	<b>DIMENSIONS</b>		
2,1	LOA [meters]		67,70 m
2,2	LBP [meters]		59,40 m
2,3	Breadth mld [meters]		14,50 m
2,4	Depth mld [meters]		5,97 m
2.5.1	Summer draught [meters]		5,85 mtr. Min. draft (Light ship) 3,5 mtr. Max. draft (Tropical) 6,08 mtr
2.5.2	Operating draught [meters]	Not more than 5.95 M at specified min DWT	5 m at 1000 DWT ( TOTAL DWT 2005 TON)
2,6	Clear deck Aft		407 m2
2.6.1	Length [meters]		37 mtrs
2.6.2	Breadth [meters]		11 mtrs
2.6.3	Area [sq. meters]	Not less than 300 sq. meters	407m2

<b>3</b>	<b>MACHINERY</b>			
<b>3.1</b>	<b>Main Engines</b>			
3.1.1	Number of Main Engines	Not less than 2 [two]	4	
3.1.2	Make		Bergen Diesel	
3.1.3	Model		KVMB 12	
3.1.4	Max continuous rating (for all main engines together) at 100% - NOMINAL	Not less than 9600 BHP	12240 BHP	
3.1.5	Year of build	New at the time of installation onboard the Vessel	1983 (New at the time of installation onboard the Vessel)	
<b>3.2</b>	<b>Main Propulsion</b>			
3.2.1	Number of propellers	Not less than 2 [two]	2 x Ulstein, 180 Rpm	
3.2.2	Type	Shrouded CPP preferred	CPP	
3.2.3	Propeller diameter [mtrs]		3600 mm	
3.2.4	Propeller make		ULSTEIN PROPELLER	
<b>3.3</b>	<b>Side Thrusters</b>		3	
3.3.1	Number of bow thrusters	Not less than 2 [one]	2	
3.3.2	Number of stern thrusters		1	
3.3.3	Rating of BTs [KW]		1180 KW	
3.3.4	Rating of STs [KW]		590 KW	
<b>3.4</b>	<b>Generators</b>			
3.4.1	Number of generators	At least three independent power sources	4 Independent Power Sources (2 x Shaftgenerators, Siemens 3200KW, 2 x	
3.4.2	Total rating [KVA]		3690 KVA	
3.4.3	Voltage rating		380V	
3.4.4	Frequency [Hz]		50 Hz	
<b>3.5</b>	<b>Steering gear</b>			
3.5.1	Type	Hydraulic preferred	Hydraulic, Tennford 1-2X (18M300/2GGM620)-FU	

3.5.2	Number of rudders	Not less than 2 [two]	2 Tennford
4	<b>PERFORMANCE</b>		
4.1	Trial speed [knots]		16,5 knots
4.2	Cruising speed [knots]		12-15 knots
4.3	Bollard pull [Max cont]	Not less than 105 Metric Tons	140 Tons
4.4	Fuel consumption [KI/day]		
4.4.1	Standby		7,1 m3
4.4.2	Underway		18 m3
4.4.3	Towing		44,7 m3
5	<b>TOWING AND ANCHOR HANDLING</b>		
5.1	<b>Winch</b>		
5.1.1	Type	Min. Double drum water fall hydraulic	Brattvaag SL 250( Double drum Water fall hydraulic)
5.1.2	Make		Brattvaag
5.1.3	Model		SL 250W / BSL 250 WX
5.1.4	Drum capacity	For a total length of not less than 2,000 mtrs., 72mm/76mm wire rope.	2400 mtrs / 72mm
5.1.5	Work wire	Total length of 2000 mtrs. or more of 72/76mm required	2400 mtrs / 72mm
5.1.6	Drum speed [M/min]		60 ton @ 28mtr/min & 250 ton @ 6,4 mtr/min
5.1.7	Winch stall capacity	Not less than 250 T	250 ton
5.1.8	Line pull		350 ton
5.2	<b>Wildcat for chains</b>		
5.2.1	Suitable for 70 mm Chain		76mm / 83mm
5.2.2	Chain lockers	Not less than 2 for 70mm stud-link chains	600 m 3 1/4 " chain
5.2.3	Chain locker capacity [cubic meters]	2 X 90 cu mtrs.	203 cu. Mtrs.
5.3	<b>Thrusting and shackle</b>		
			Karm 130318/130554, 240 ton.

5,4	Spare Storage		Karm O 350/130318/130554, 240 ton.
5,5	Stern roller		Two storage drums. One can hold 1200m. 70 mm. Wire and the other 1000 m. 64 mm. We
5,6	Tugger winches		Ulstein 3,66 mtr x 2,50 mtr, 350 ton SWL
5,7	Capstans [on aft deck]		2 Brattvaag WMA 1010
6	<b>NAVIGATION AND COMMUNICATION EQUIPMENT</b>		
6,1	Gyrocompass	REQUIRED	Anschutz Standard 20
6,2	Magnetic compass	REQUIRED	Standard
6,3	Echo sounder	REQUIRED	Simrad / ED161
6,4	Auto pilot	REQUIRED	Racal Decca Pilot 450
6,5	Radar	REQUIRED	2 Furuno ARPA, X and S band, 72 nm
6,6	SSB Radio transceiver/ GMDSS	REQUIRED	JRC (GMDSS area 4) JSS-800
6,7	Marine VHF transceiver	REQUIRED	2 - JRC/JHS-324 & Sailor/RT2048
6,8	GPS	REQUIRED	Phillips MK10, Furuno GP 80
6,9	Portable VHF	REQUIRED	5 - 3 x Jotron/Tron & 2 x Motorola GP-300
6,10	INMAR SAT	REQUIRED	Satpol/Phillips Safecom C
7	<b>ACCOMMODATION</b>		
7,1	Crew compliment		17
7,2	For charterer's use	Suitable accommodation for five persons required	7
8	<b>CAPACITIES</b>		
8,1	Deck cargo	Not less than 500 Ton	750 ton
8,2	Deck-loading [T/sq mtrs]		6 T/m <sup>3</sup>
8,3	Fuel (m <sup>3</sup> )		1041 m <sup>3</sup>



8,4	Drill water (m <sup>3</sup> )		516 m <sup>3</sup>
8,5	Pot water (m <sup>3</sup> )		289 m <sup>3</sup>
8,6	Ballast water (m <sup>3</sup> )		516 m <sup>3</sup>
8,7	Liquid mud (m <sup>3</sup> )	REQUIRED	119 m <sup>3</sup>
8,8	Dry bulk (m <sup>3</sup> )		196 m <sup>3</sup>
8,9	Dead weight [Tons]	Not less than 1000 Tons at 5.95 M draught	5 m at 1000 DWT ( TOTAL DWT 2005 TON)
8,1	4" Cam lock couplings	Required on all hoses	Yes
9	<b>RIGGING EQUIPMENT</b>		
	<b>WILL BE PROVIDED</b>		
10	<b>FIFI</b>	<b>VESSEL IS FITTED WITH FI-FI Class-II</b>	
11	<b>OTHER CAPABILITIES</b>		
	<b>Certificates</b>	1. Certificate of Registry	ENCLOSED
		2. Class Certificate (H&M)	ENCLOSED
		3. Bollard Pull Certificate	ENCLOSED
		4. G.A PLAN	ENCLOSED
		5. DEAD WEIGHT SCALE	ENCLOSED



**ANNEX "B" to Uniform Time Charter Party for Offshore Service Vessels**  
**Code Name: "SUPPLYTIME 89" - dated**



**INSURANCE**

Insurance policies (as applicable) to be procured and maintained by the Owners under Clause 14:

- (1) Marine Hull Insurance. - Hull and Machinery Insurance shall be provided with limits equal to those normally carried by the Owners for the Vessel.
- (2) Protection and Indemnity (Marine Liability) Insurance. - Protection and Indemnity or Marine Liability Insurance shall be provided for the Vessel with a limit equal to the value under paragraph 1 above or U.S. \$5 million, whichever is greater, and shall include but not be limited to coverage for crew liability, third party bodily injury and property damage liability, including collision liability, towage liability (unless carried elsewhere).
- (3) General Third Party Liability Insurance. - Coverage shall be for:
 

Bodily Injury	per person
Property Damage	per occurrence.
- (4) Workmen's Compensation and Employer's Liability Insurance for Employees. - Covering non-employees for statutory benefits as set out and required by local law in area of operation or area in which the Owners may become legally obliged to pay benefits.
- (5) Comprehensive General Automobile Liability Insurance. - Covering all owned, hired and non-owned vehicles, coverage shall be for:
 

Bodily Injury	According to the local law.
Property Damage	In an amount equivalent to single limit per occurrence.
- (6) Such other Insurances as may be agreed.

*[Handwritten signature]*

**ANNEX "C" to Uniform Time Charter Party for Offshore Service Vessels**  
**Code Name: "SUPPLYTIME 89" - dated**



**AGREEMENT FOR MUTUAL INDEMNITY AND WAIVER OF RECOURSE**

*(Optional, only applicable if stated in Box 28 in PART I)*

This Agreement is made between the Owners and the Charterers and is premised on the following:

- (a) The Charterers and the Owners have entered into a contract or agreement dated as above regarding the performance of work or service in connection with the Charterers' operations offshore ("Operations");
- (b) The Charterers and the Owners have entered into, or shall enter into, contracts or agreements with other contractors for the performance of work or service in connection with the Operations;
- (c) Certain of such other contractors have signed, or may sign, counterparts of this Agreement or substantially similar agreements relating to the operations ("Signatory" or collectively "Signatories"); and
- (d) The Signatories wish to modify their relationship at common law and avoid entirely disputes as to their liabilities for damage or injuries to their respective property or employees;

In consideration of the premises and of execution of reciprocal covenants by the other Signatories, the Owners agree that:

1. The Owners shall hold harmless, defend, indemnify and waive all rights of recourse against the other Signatories and their respective subsidiary and affiliate companies, employees, directors, officers, servants, agents, invitees, vessel(s), and insurers, from and against any and all claims, demands, liabilities or causes of action of every kind and character, in favour of any person or party, for injury to, illness or death of any employee of or for damage to or loss of property owned by the Owners (or in possession of the Owners by virtue of an arrangement made with an entity which is not a Signatory) which injury, illness, death, damage or loss arises out of the Operations, and regardless of the cause of such injury, illness, death, damage or loss even though caused in whole or in part by a pre-existing defect, the negligence, strict liability or other legal fault of other Signatories.
2. The Owners (including the Vessel) shall have no liability whatsoever for injury, illness or death of any employee of another Signatory under the Owners' direction by virtue of an arrangement made with such other Signatory, or for damage to or loss of property of another Signatory in the Owners' possession by virtue of an arrangement made with such other Signatory. In no event shall the Owners (including the Vessel) be liable to another Signatory for any consequential damages whatsoever arising out of or in connection with the performance or non-performance of this Agreement, including, but not limited to, loss of use, loss of profits, shut-in or loss of production and cost of insurance.

3. The Owners undertake to obtain from their insurers a waiver of rights of subrogation against all other Signatories in accordance with the provisions of this Agreement governing the mutual liability of the Signatories with regard to the Operations.
4. The Owners shall attempt to have those of their sub-contractors which are involved in the Operations become Signatories and shall promptly furnish the Charterers with an original counterpart of this Agreement or of a substantially similar agreement executed by its sub-contractors.
5. Nothing contained in this Agreement shall be construed or held to deprive the Owners or the Charterers or any other Signatory as against any person or party, including as against each other, of any right to claim limitation of liability provided by any applicable law, statute or convention, save that nothing in this Agreement shall create any right to limit liability. Where the Owners or the Charterers or any other Signatory may seek an indemnity under the provisions of this Agreement as against each other in respect of a claim brought by a third party, the Owners or the Charterers or any other Signatory shall seek to limit their liability against such third party.
6. The Charterers shall provide the Owners with a copy of every counterpart of this Agreement or substantially similar agreement which is executed by another Signatory pertaining to the Operations, and shall, in signing this, and in every counterpart of this Agreement, be deemed to be acting as agent or trustee for the benefit of all Signatories.
7. This Agreement shall inure to the benefit of and become binding on the Owners as to any other Signatories on the later of the date of execution by the Owners and the date of execution of a counterpart of this Agreement or a substantially similar agreement by such other Signatory pertaining to the Operations.
8. Any contractor, consultant, sub-contractor, etc., performing work or service for the Charterers or another Signatory in connection with the Operations which has not entered into a formal contract for the performance of such work or service may nevertheless become a Signatory by signing a counterpart of this Agreement or a substantially similar agreement which shall govern, as to the subject of this Agreement, the relationship between such new Signatory and the other Signatories and also by extension its relations with the Charterers.
9. This Agreement may be executed in any number of counterparts or substantially similar agreements as necessary but all such counterparts shall together constitute one legal instrument.



**ANNEX "D" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS**  
**CODE NAME: "SUPPLYTIME 89" -DATED**

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**OWNERS VESSEL MARINE CREW**

**MARINE CREW**

Provided by Owners

Bilag 2

**SIDE-AGREEMENT TO TIME CHARTER PARTY BETWEEN TFDS OFFSHORE  
AS AND ROLV BERG DRIVE AS REGARDING AHTS ALDOMA**

It is understood between the parties that ONGC may offer Rolv Berg Drive AS extensions to the 3 year contract with contract no: MR/MM/OFF.LGTS./CH/VESSELS//10(109)/2003. It is further agreed between the parties that should Rolv Berg Drive AS be granted extension to this contract or new contracts with ONGC, Rolv Berg Drive shall have the right to extend the charter of AHTS Aldoma on a day-rate not to exceed USD 9.000,-.

This agreement shall be subject only to TFDS Offshore securing further charter with the vessel's owner.

It is further agreed that should Rolv Berg Drive AS secure other future contracts with ONGC TFDS Offshore AS will be given first option where they have vessels which meet the requirements at competitive rates.

Rett kopi bekreftet  
Certified copy  
Kristian Lindhartsen  
Advokatfullmektig

This agreement is entered into on the 5<sup>th</sup> of March 2004.

For TFDS Offshore AS

  
Svein Hoel  
Managing Director

For Rolv Berg Drive AS

  
Snorre S. Stinessen  
Coordinating Manager

Bilag 3

**ROLV BERG DRIVE A/S**

Leverandør - E&amp;M

Rett kopi bekreftet

Certified copy

Kristian Lindhartsen  
AdvokatfullmektigNorth Offshore AS  
Postboks 6155  
9291 Tromsø

Ved Svein Hoel

Tromsø, 1. august 2006.

**Ad AHTS Aldoma.**

Som De er kjent med har ONGC et anbud ute som skal besvares den 3. august 2006, for flere ulike typer skip. Anbudsnummeret er ONG/COL/HMM/ML/VESSELS/10/2005/P761C06003. Anbudet er som De sikkert også er kjent med delvis et svar på nye behov, men først og fremst et svar på behov for fornyelse av eksisterende arbeidsoppgaver/kontrakter. Herunder også vår kontrakt for Aldoma.

I tråd med vårt "Letter of Exclusivity" datert 15. oktober 2003 og vår "Side-Agreement to Time Charter Party Between TFDS Offshore AS and Rolv Berg Drive AS Regarding AHTS Aldoma" datert 5. mars 2004 samt certepartiet, har vi besluttet å legge inn Aldoma på dette anbudet.

Tidspunkt for innlevering av anbudet er som kjent 3. august, avgjørelse er ventet innen årets utgang.

Kontraktenes varighet er 5 år, oppstart vil for Aldomas del bli etter avslutning av løpende kontraktsperiode.

Vi foreslår et møte en av de nærmeste dagene for å diskutere eventuelle nødvendige oppgraderinger av skipet i tråd med de nye anbudskriteriene.

Med vennlig hilsen

Snorre S. Stinessen  
For Rolv Berg Drive AS



Bilag 4

-----Opprinnelig melding-----

**Fra:** Rolv Berg [mailto:Rolv@rbdrive.com]

**Sendt:** 7. januar 2007 15:50

**Til:** svein.hoel@offshore.tfds.no

**Kopli:** Morten Lund; snorre@rbdrive.com

**Emne:** VS: Opsjonen

**Viktighet:** Høy

Rett kopi bekreftet

Certified copy

Kristian Lindhartsen  
Advokatfullmektig

Svein Hoel,

North Offshore AS

Vi viser til tidligere diskusjoner om vår opsjon på å forlenge certepartiet for "Aldoma". Vi utøver med dette opsjonen for en periode på 3 pluss 2x1 års opsjoner i direkte forlengelse av det certeparti som nå løper.

Vi ber om Deres positive bekreftelse på at opsjonsavtalen er inngått innen Kl 1200 tirsdag den 9. januar 2007

Vi vil nå varsle de russiske eiere om at opsjonen er utøvet.

De har tidligere opplyst til ONGC og oss at Aldoma allerede er kommitert til annen beskjeftigelse etter utløpet av den nåværende certepartiperiode. Så vidt vi har forstått er dette unikt. Vi ber Dem om å bekrefte dette. Vennligst se bort fra e-posten angjeldende samme sak som ble sendt for noen minutter siden hvor opsjonsperiodene og svarfrist ikke var fullt innsatt.

Med vennlig hilsen  
Rolv Berg

-----  
This verifies that this e-mail has been scanned for virus and deemed virus-free  
according to F-secure Content Scanner 5.0  
Sun, 7 Jan 2007 17:08:47 +0100 GMT  
-----

03.10.2007

Bilag 5

Rett kopi bekreftes  
Certified copy  
Kristian Lindhartsen  
Advokatfullmektig

-----Opprinnelig melding-----

**Fra:** Magne Andersen [mailto:mandersen@nordisk.no]

**Sendt:** 8. januar 2007 18:42

**Til:** Morten Lund

**Kopi:** Svein Hoel; Østen Mortvedt; Geir Gustavsson; Ada Schive; aevje@nordisk.no

**Emne:** FW: Opsjonen

**Viktighet:** Høy

Vi viser til nedenstående e-mall fra Rolv Berg Drive AS 7. januar 2007.

For det første kan vi ikke se at RBD har godtgjort at RBD har fått forlenget den någjeldende kontrakten med ONGC, og heller ikke at det er godtgjort at RBD har fått en ny kontrakt med ONGC, slik det er forutsatt i "Sideletter".

For det annet, som RBD allerede er gjort kjent med, har North ingen mulighet for å bekrefte inngåelse av opsjonsperioden på grunn av følgende tre forhold:

- i) Det har ikke lykket North å slutte Aldoma for en slik periode som RBD ber om.
- ii) Det følger uttrykkelig av det någjeldende certepartiet mellom North og Aldomas registrerte eier at North ikke er berettiget til å slutte skipet til RBD.
- iii) Det følger uttrykkelig av det någjeldende certepartiet mellom North og Aldomas registrerte eier at North ikke er berettiget til å slutte skipet på en så lav rate som følger av certepartiet mellom North og RBD.

For det tredje er det Norths syn at opsjonen under ingen omstendighet kan utøves så lenge RBD er i mislighold under certepartiet, slik tilfellet er for øyeblikket.

Vennlig hilsen  
Magne Andersen

RE/ snare

Bilag 6

Today we have received original NOA for Aldoma.  
S.P.N.



OIL AND NATURAL GAS CORPORATION LIMITED  
MUMBAI REGION

Offshore Logistics, MM Section,  
7<sup>th</sup> floor, 11 HIGH Office Complex,  
Sion-Bandra Link Road, Mumbai-400017 (INDIA)  
Tel : 24088000, 24088723 Fax: 24088600

FAX

Ref.No. ONG/COL/HMM/CSR/ML/CH/VESSELS/10/2005/P761C06003 Date: 19.2.2007  
From: A.K.RAY, DGM-I/C-MM

To:  
ROLV BERG DRIVE  
TROMSO, NORWAY

PROJECT OFFICE:  
214, AJANTA EXECUTIVE CENTRE,  
AJANTA HOTEL, 8, JUHU TARA ROAD,  
SANTACRUZ (W),  
MUMBAI-400 049, INDIA

FAX: +47-77668080/+91-22-2660 8696

Kristian Lindhartsen  
Advokatfullmektig  
Rett kopi bekreftes  
Certified copy

SUB: TENDER NO. ONG/COL/HMM/CSR/ML/CH/VESSELS/10/2005/P761C06003 FOR  
CHARTER HIRE OF ANCHOR HANDLING TUG-CUM-SUPPLY VESSELS, PLATFORM  
SUPPLY VESSELS & OFFSHORE SUPPLY VESSELS.

- REF: 1. YOUR BID NO.RBD/AHTS/SUP/VSL/ONGC/06/01 DATED 02.08.2006  
SUBMITTED AGAINST THE TENDER.  
2. CONFIRMATION/DEFICIENT DOCUMENTS SUBMITTED BY YOU VIDE  
LETTER NO. RBD/AHTS/CLR/ONGC/06/10 DTD.14.11.2006.  
3. YOUR LETTER NO. RBD/AHTS/CON/ONGC/06/10 DTD. 11.01.2007  
CONFIRMING THE AVAILABILITY OF VESSEL.  
4. YOUR LETTER NO. RBD/AHTS/CLR/EXT/ONGC/07 DTD. 12.02.2007  
EXTENDING THE BID VALIDITY UPTO 15.03.2007.

AA) OIL AND NATURAL GAS CORPORATION LTD. (ONGC) IS PLEASED TO HEREBY  
PLACE THIS NOTIFICATION OF AWARD OF CONTRACT ON M/S ROLV BERG DRIVE,  
TROMSO, NORWAY HAVING PROJECT OFFICE AT 214, AJANTA EXECUTIVE  
CENTRE, AJANTA HOTEL, 8, JUHU TARA ROAD, SANTACRUZ (W), MUMBAI-400  
049, INDIA (HEREIN AFTER REFERRED TO AS "CONTRACTOR") FOR CHARTER HIRE OF  
ANCHOR HANDLING TUG-CUM-SUPPLY VESSEL "ALDOMA" UNDER CATEGORY-I B  
OF THE TENDER (AHTS OF NOT LESS THAN 120 TON BOLLARD PULL) FOR SCOPE OF



WORK AS DETAILED IN ABOVE TENDER AND PRE-BID MINUTES AND ACCEPTED BY M/S. ROLV BERG DRIVE UNCONDITIONALLY.

THE CONTRACTOR MUST SUBMIT THE BOLLARD PULL TEST CERTIFICATE, LINEPULL/BREAK LOAD AND STALL CAPACITY CERTIFICATES OF THE ANCHOR WINCH (MANUFACTURERS AND/OR CLASS APPROVED) AND SMC (IN TERMS OF TECHNICAL BEC CLAUSE- B.1 (4-D)) WITHIN 10 DAYS FROM DATE OF THIS NOA. THE CERTIFICATES SUBMITTED SHOULD HAVE THE VALIDITIES AS GIVEN IN BEC CLAUSE B.1 (4-D). THE DOCUMENTS ARE TO BE SUBMITTED TO THE OFFICE OF INCHARGE MARINE PLANNING CELL. IN CASE THE CONTRACTOR FAILS TO SUBMIT THE CERTIFICATES WITHIN 10 DAYS OF NOA, THEIR CONTRACT SHALL BE TERMINATED AND BID BOND INVOKED.

BB) FOR CARRYING OUT SUBJECT OPERATIONS AS DETAILED ABOVE, ONGC SHALL PAY TO THE CONTRACTOR, DAILY CHARTER RATE OF US\$15,900/- (UNITED STATES DOLLARS FIFTEEN THOUSAND NINE HUNDRED ONLY). PRICE STATED ABOVE IS FIRM AND VALID DURING ENTIRE CONTRACT PERIOD AND SHALL NOT BE SUBJECT TO ANY ESCALATION ON ANY GROUND WHATSOEVER. THE PRICE IS INCLUSIVE OF ALL CHARGES, MOBILISATION AND DEMOBILISATION, TAXES, FRES, LEVIES, DUTIES, LUBRICANTS, GREASES ETC. WHATSOEVER, PAYABLE IN CONNECTION WITH EXECUTION OF WORKS/ SERVICES UNDER THIS TENDER. FUEL AND WATER WOULD BE PROVIDED BY ONGC AS PER CLAUSE NO.10 ("OBLIGATIONS OF CHARTERER") OF SPECIAL CONDITIONS OF CONTRACT CONTAINED IN MODEL CONTRACT.

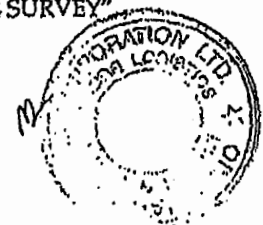
CC) THE PAYMENT UNDER THIS AWARD WILL BE MADE FOR ACTUAL NO. OF DAYS OF UTILISATION OF THE VESSEL FROM THE DATE OF ON-HIRE AND ACCEPTANCE BY ONGC FOR ONGC'S OPERATIONS UNDER THIS CONTRACT. ALL PAYMENTS SHALL BE MADE IN ACCORDANCE WITH THE TERMS AND CONDITIONS IN ONGC'S MODEL CONTRACT OF THE ABOVE REFERRED TENDER.

DD) THE PERIOD OF CONTRACT FOR CHARTER HIRE SHALL BE FOR A FIRM PERIOD OF FIVE YEARS.

EE) THE VESSEL IS TO BE MOBILISED WITHIN 90 DAYS OF RELEASE BY ONGC FROM THE ONGOING CONTRACT, AFTER TAKING DUE CLEARANCES FROM ALL THE GOVT. / REGULATORY AUTHORITIES INCLUDING DG SHIPPING INDIA, NAVAL CLEARANCE, SECURITY CLEARANCE FOR THEIR MASTERS/CREWS. THE RESPONSIBILITY OF OBTAINING STATUTORY CLEARANCES FROM GOVT. AUTHORITIES, NAVAL CLEARANCE ETC. SHALL BE OF THE CONTRACTOR AT THEIR OWN COST. IN CASE OF DELAY IN MOBILISATION, THE L.D./TERMINATION CLAUSE WILL BE APPLICABLE AS PER CLAUSE NO.18.5 OF MODEL CONTRACT/ CLAUSE NO.3 OF SPECIAL CONDITIONS OF CONTRACT CONTAINED IN MODEL CONTRACT.

THE EFFECTIVE DATE OF COMMENCEMENT OF THE CONTRACT SHALL BE DEEMED TO BE THE DATE OF THE ARRIVAL OF THE VESSEL AT THE SPECIFIED PORT AFTER DUE CLEARANCES FROM ALL GOVT. AUTHORITIES INCLUDING D.G.(SHIPPING) INDIA, NAVAL CLEARANCE AND HAVING ALL VALID CERTIFICATES/ LICENSES FROM THE CONCERNED AUTHORITIES FOR THEIR VESSEL, MASTERS/ CREW.

THE COMMENCEMENT WOULD BE AFTER SATISFACTORY "ON HIRE SURVEY"





PRIOR TO COMMENCING OPERATION FOR ONGC, THE VESSEL IS TO BE PUT UP FOR INSPECTION AS PER BEC CLAUSE B.1 (10) AND OFFERED FOR "ON HIRE SURVEY". IN CASE THE VESSEL DOES NOT ADHERE TO THE SPECIFICATIONS, THIS NOTIFICATION OF AWARD OF CONTRACT SHALL BE CANCELLED AND BANK GUARANTEE SHALL BE FORFEITED. ONGC REQUIRES 7 DAYS PERIOD FOR CARRYING OUT TPI AND THAT THE VESSEL IS TO BE DELIVERED AS PER MOB. SCHEDULE. IN CASE THE CONTRACTOR FAILS TO ADHERE TO THE TIME SCHEDULE STIPULATED AS ABOVE, THE CHARTERER RESERVES THE RIGHT TO INVOKE THE PERFORMANCE BANK GUARANTEE SUBMITTED BY THE CONTRACTOR AND TERMINATE THE CONTRACT WITHOUT PREJUDICE TO ANY OTHER RIGHT OR REMEDY AVAILABLE AS PER THE CONTRACT.

FF) M/S. ROLV BERG MAY CONTACT THE OFFICE OF INCHARGE MARINE PLANNING CELL & AND INCHARGE-ONGC, NHAVA SUPPLY BASE FOR NECESSARY ON-HIRE SURVEY.

THE CONTRACTOR SHALL CONFIRM COMPLETION OF INSPECTION AND COMPLETE READINESS OF THE VESSEL TO THE SATISFACTION OF ONGC INCLUDING CONFORMITY TO ONGC TENDER SPECIFICATIONS CERTIFIED BY TPI WITHIN THE MOBILIZATION PERIOD.

GG) AS PER CLAUSE NO. 14.2 OF SPECIAL CONDITIONS OF CONTRACT, ONGC RESERVES THE ABSOLUTE RIGHT TO TERMINATE THIS AGREEMENT AT ITS SOLE DISCRETION AT ANY TIME AFTER FIRST 36 MONTHS OF THE CONTRACT, BY GIVING THIRTY (30) DAYS WRITTEN NOTICE TO THE CONTRACTOR TO THAT EFFECT WITHOUT ASSIGNING ANY REASON THEREOF AND THE CONTRACTOR SHALL NOT BE ENTITLED FOR ANY COMPENSATION OF PAYMENT OF WHATSOEVER NATURE ON ACCOUNT OF SUCH TERMINATION.

HH) M/S. ROLV BERG SHALL SUBMIT IRREVOCABLE AND UNCONDITIONAL PERFORMANCE BANK GUARANTEE FOR US\$ 442,150/- (UNITED STATES DOLLARS FOUR HUNDRED FORTY TWO THOUSAND ONE HUNDRED FIFTY ONLY). THE PERFORMANCE BANK GUARANTEE IS TO BE SUBMITTED WITHIN 15 DAYS FROM DATE OF THIS NOA. AS PER CLAUSE 36.2 OF ANNEXURE-I OF BID DOCUMENT, FAILURE OF THE CONTRACTOR TO COMPLY WITH THE REQUIREMENT OF CLAUSE 17.7(C) OF ANNEXURE-I OF BID DOCUMENT SHALL CONSTITUTE SUFFICIENT GROUNDS FOR THE ANNULMENT OF THE AWARD AND FORFEITURE OF THE BID SECURITY.

II) FORMAL CONTRACT WITH YOU SHALL BE SIGNED WITHIN 30 DAYS FROM DATE OF NOA AND AFTER RECEIPT OF PERFORMANCE BANK GUARANTEE AS STATED ABOVE. TILL FORMAL CONTRACT IS SIGNED, THIS NOTIFICATION OF AWARD OF CONTRACT IS BINDING ON BOTH THE PARTIES. THE CONTRACT SHALL BE GOVERNED AS PER MODEL CONTRACT ENCLOSED WITH THE TENDER DOCUMENT AND THE MINUTES OF PRE-BID CONFERENCE WHICH WAS ACCEPTED UNCONDITIONALLY BY YOU. PLEASE NOTE THAT THE VESSEL IS TO BE MOBILISED PENDING SIGNING OF FORMAL CONTRACT. IN CASE OF DELAY IN SIGNING THE CONTRACT ON THE PART OF ONGC, CONTRACTOR SHALL BE PAID 80% OF THE APPLICABLE RATES FALLING DUE AS PER THE CONTRACTUAL OBLIGATIONS ON ADHOC BASIS, TILL FORMAL SIGNING OF THE CONTRACT, AFTER WHICH THE BALANCE OF DUE PAYMENTS SHALL BE RELEASED / ADJUSTED AGAINST REGULAR





BILLS. HOWEVER NO PAYMENT WILL BE MADE AND MOBLILISATION WILL NOT BE DEEMED COMPLETED, WHEN THE DELAY IS ON THE PART OF THE CONTRACTOR TO SIGN THE CONTRACT, AS PER DRAFT CONTRACT AT ANNEXURE-II OF THE TENDER.

JJ) KINDLY ACKNOWLEDGE THE RECEIPT OF THIS NOA PER RETURN. THE EFFECTIVE DATE OF CONTRACT REMAINING AS 19.2.2007 I.E. THE DATE OF NOTIFICATION OF AWARD.

(A.K.RAY)  
DGM-I/C-MM

COPY BY POST TO:  
ROLV BERG DRIVE  
TROMSO, NORWAY.

PROJECT OFFICE:  
214, AJANTA EXECUTIVE CENTRE,  
AJANTA HOTEL, 8, JUHU TARA ROAD,  
SANTACRUZ (W),  
MUMBAI-400 049, INDIA

(A.K.RAY) 17/2/07  
DGM-I/C-MM



## **EXHIBIT 3**

THOMMESSEN

Office translation

Free translation of  
**WRIT OF SUMMONS**

to

**Nord-Troms County Court**

Oslo, 7. November 2007

Our reference 1798994/1

<b>Plaintiff</b>	Rolv Berg Drive AS v/Chairman of the Board of Directors, Mr Rolv Berg Postboks 96 9257 Tromsø
Plaintiff's counsel	Thommessen Krefling Greve Lund AS v/ assistant attorney Kristian Lindhartsen and legal assistant, attorney Olav Vikøren Postboks 1484 Vikå 0116 Oslo
<b>Defendant</b>	North Offshore AS v/Chairman of the Board of Directors, Mr Svein Hoel 9291 Tromsø
Defendant's counsel	Nordisk Legal Services v/attorney Magne Andersen Postboks 3033 Ellsenberg 0207 Oslo
<b>Subject for the case</b>	Claim in respect of breach of contract

# THOMMESSEN

## **1 INTRODUCTION – FORMALITIES**

The case is presented directly for the County Court as attorneys represent both parties and the Plaintiff therefore considers it without purpose bringing the matter before the Conciliation Board, of Civil Procedure Act Section 274 first paragraph.

Both Plaintiff and Defendant have their place of business in the city of Tromsø, and the correct legal domicile is therefore Nord-Troms County Court, of the rules of Civil Procedure Act Section 17.

## **2 THE RELEVANT FACTS**

Rolv Berg Drive AS had chartered the vessel "Aldoma" on a 3-year time charterparty.

Annex 1: Charterparty dated 16 February 2004

[This enclosure is in English and will therefore not be provided in free translation]

The vessel's owner is a Russian company, Arktikmor Neftegaz Razvedka. The Defendant has had the vessel on charterparty since 1992, and they are still charterers of the vessel.

On 15 March 2004, the parties entered into a separate agreement regarding a possible extension of the above-mentioned charterparty. The agreement stated that the Plaintiff could continue to hire the vessel provided that certain conditions in the new agreement (the "Option Agreement") were met.

Annex 2: Side-Agreement to Time Charterparty between TFDS Offshore AS and Rolv Berg Drive AS regarding AHTS Aldoma

[This enclosure is in English and will therefore not be provided in free translation]

August 2006, the Defendant was advised that the Plaintiff would offer the Aldoma on a tender from the Indian oil company Oil and Natural Gas Corporation Ltd. ("ONGC"), and that Rolv Berg Drive would exercise their option on extension if they were successful in bidding for the tender.

Annex 3: Letter dated 1 August 2006 from Rolv Berg Drive AS to TFDS Offshore AS

In an email dated 7 January 2007 and a letter dated 2 February 2007, the Plaintiff declared that they wanted to exercise their option of 3-year continuation of the charterparty.

Annex 4: Email dated 7 January 2007 from Mr Rolv Berg to Mr Svein Hoel

In an email sent from the Defendant's counsel to the Plaintiff's counsel it was advised that the Defendant did not consider the conditions in the Option Agreement fulfilled and that the "Aldoma" consequently would not be made available to the Plaintiff.

Annex 5: Email dated 8 January 2007 from attorney Magne Andersen to attorney Morten Lund

In a telefax dated 19 February 2007, it was confirmed that the Plaintiff had been successful with their bid for the tender for further operation of the vessel "Aldoma" with ONGC for a period of 5 years, with a daily rate of USD 15,900.

# THOMMESSEN

Annex 6: Telefax dated 19 February 2007 from ONGC to Rolv Berg

[This enclosure is in English and will therefore not be provided in free translation]

With intent, the Defendant has breached the Option Agreement by not allowing the Plaintiff further contract for the vessel in accordance with the terms of the Option Agreement. Consequently, the Plaintiff did lose their contract in India, and did therefore incur a loss. Presently, the "Aldoma" is in Nigeria, still on charterparty to the Defendant.

### 3 LEGAL SUBMISSIONS

The Plaintiff submits that the Defendant is liable to pay damages in respect of the loss incurred by the Plaintiff as a consequence of the intentional breach of the Option Agreement.

The legal basis for this claim is the rules of damages in contract. The agreement between the Plaintiff and the Defendant contains two cumulative terms that must be met in order for the option to be exercised. Firstly, the Plaintiff must have been offered a contract from ONGC, and secondly, the Defendant must have secured their contract with the vessel's owner. Beyond those requirements, there are no further obligations under the Option Agreement.

As described above, the Plaintiff was successful in winning the tender from ONGC and was therefore awarded a contract as mentioned in the Option Agreement. Further, since entering into the Option Agreement and up to and including today, the vessel has been on charter from its owner to the Defendant. Therefore, the requirements necessary to exercise the option were met.

The Plaintiff has suffered a substantial loss of income as a consequence of the breach of contract by the Plaintiff. In accordance with the tender documents, the Plaintiff was offered a contract for 5 years with a rate of USD 15,900 per day. Under the Option Agreement, the daily rate is maximum USD 9,000 per day, which gives an expected earning for the Plaintiff of USD 6,900 per day. Based on an expected duration of 5 years, the Plaintiff would have had an earning totalling to (6,900 x 365 x 5) USD 12,592,500 for the period.

In addition, the Plaintiff has provided a performance bond to ONGC for USD 422,150. A performance bond is a bank guarantee for correct fulfilment of a contract. By not fulfilling their obligations toward ONGC, ONGC has demanded payment under the performance bond, and the Plaintiff has therefore incurred a further loss of USD 442,150.

The Plaintiff notes that the Defendant in the correspondence between the parties has argued legally against the Plaintiff's right to exercise the Option Agreement. However, it cannot be considered that the requirements in the Option Agreement were not met. The Plaintiff appreciates that the "Aldoma" does not meet all the requirements contemplated under the tender requirements; however, this was clarified to ONGC in the offer documents. Therefore, the tender was awarded to the Plaintiff on basis of the vessel as described in the offer documents. Whether or not the vessel was suitable, is an issue between the Plaintiff and ONGC, inasmuch as the vessel is not utilised in breach of the contract between the Plaintiff and Defendant.

Therefore, with intention, the Defendant has unlawfully terminated the Option Agreement. As this breach of contract has resulted in a loss before the Plaintiff, there is thus an obligation for the Defendant to pay damages.



# THOMMESSEN

In accordance with the ordinary principles that apply for this calculation of damages, the Plaintiff's loss incurred as a consequence of the breach of contract shall form basis for the calculation of damages. In this regard, it is foreseeable for the Defendant that the Plaintiff's loss mirrors the possible earning under the subject agreement. Further, it is clear that the loss incurred in connection with the above-mentioned performance bond trigger a duty to pay damages.

## 4 PROCEDURAL

In case of non-appearance or too late Defence Pleading, we ask for a decision in default.

We reserve the right to further submissions and evidence, hereunder to summon witnesses.

We hereby ask for the following honourable

### decision:

- 1 North Offshore AS (org no. 929 987 020) is to pay Rolv Berg Drive AS an amount not higher than USD 13,019,650, with addition of the interest on overdue payment, as provided by the law.
- 2 North Offshore AS (org no. 929 987 020) is to pay Rolv Berg Drive AS the costs incurred in respect of the case within 14 days with addition of the interest on overdue payment, as provided by the law.

\* \* \*

This Writ of Summons in five copies, whereby two is sent to the counterparty's counsel directly.

Oslo, 7. November 2007  
Thommessen Krefting Greve Lund AS

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Kristian Lindhartsen  
Assistant attorney

Rolv Berg Drive A/S

Annex 3

North Offshore AS  
P.O.Box 6155  
9291 Tromsø

Att: Svein Hoel

Tromsø, 1 August 2006

**Ad AHTS Aldoma**

As you are aware, ONGC has a tender out that is to be replied within 3 August 2006, regarding several different types of vessels. The tender number is ONG/COL/HMMM/ML/VESSELS/10/2005/P761C06003. As you may know, the tender is partly an answer to new requirements, but also a response to a need for extension of existing tasks/contracts; hereunder our contract for the Aldoma also.

In compliance with our Letter of Exclusivity dated 15 October 2003 and our "Side-Agreement to Time Charter Party Between TFDS Offshore AS and Rolv Berg Drive AS Regarding AHTS Aldoma" dated 5 March 2004 and the charterparty, we have decided to provide an offer for the Aldoma on this tender.

As you know, the deadline for submission of the offer is 3 August, and a decision is expected within this year.

The contract duration is 5 year, and start for the Aldoma will be after the completion of the subject period of contract.

We suggest a meeting one of the nearest days to discuss possible necessary upgrades of the vessel in accordance with the new criteria under the tender.

Kind regards,

Snorre S. Stinessen  
for Rolv Berg Drive AS

Annex 4

From: Rolv Berg [<mailto:Rolv@rbdrive.com>]  
Sent: 7 January 2007 15:50  
To: [svein.hoel@offshore.tfds.no](mailto:svein.hoel@offshore.tfds.no)  
Copy: Morten Lund; [snorre@rbdrive.com](mailto:snorre@rbdrive.com)  
Subject: VS: The Option  
Importance: High

Svein Hoel,

North Offshore AS

We refer to previous discussions regarding our option to extend the charter party for the "Aldoma". We hereby exercise our option for a period 3 plus 1x1 year options in direct extension of the existing charter party.

We ask for your confirmation that you will extend accordingly within 12:00 hrs Tuesday 9 January 2007.

We will also notify the Russian owners that we have exercised the option.

You have previously advised to ONGC and us that the Aldoma is already committed to another assignment after end of this charterparty period. We understand this is not correct. We ask you to confirm this. Please disregard the email regarding the same matter which was sent some minutes ago, wherein the option period and response for reply was not inserted.

Kind regards  
Rolv Berg

Annex 5

From: Magne Andersen [mailto:mandersen@nordisk.no]  
Sent: 8 January 2007 18:42  
To: Morten Lund  
Copy: Svein Hoel; Østen Mortvedt; Geir Gustavsson; Ada Schleve; [aevie@nordisk.no](mailto:aevie@nordisk.no)  
Subject: FW: The Option  
Importance: High

We refer to the below email from Rolv Berg Drive AS dated 7 January 2007.

Firstly, we cannot see that RBD has satisfied that RBD has an extension of the existing contract with ONGC, and neither that it is satisfied that RBD has a new contract with ONGC, as contemplated in the "Sideletter".

Secondly, as RBD already already is made aware, North has no option to confirm the entering of the option period of the following three reasons:

- (I) North has not been successful in fixing the Aldoma for a period as asked by RBD.
- (II) It is an expressed term under the charter party between North and the registered owners of the Aldoma, that North is not allowed to charter the vessel to RBD.
- (III) It is an expressed term under the present charter party between North and the owners of the Aldoma that North is not allowed to charter the vessel on such low hire rate that follows by the charter party between North and RBD.

Thirdly, it is North's position that the option under no circumstances can be exercised as long as RBD is in breach of the charter party, which is the present situation.

Kind regards  
Magne Andersen

## **EXHIBIT 4**



**RAVNINFO**

**NORTH OFFSHORE AS**

**Bett kopi bekreftes**  
**Certified copy**  
**Kristian Lindhartsen**  
**Advokatfullmektig**

Skriv ut

**GRUNNFAKTA**

Sist endret 06.11.2007. Se kunngjøringer.

**Organisasjonsnr:** 929 987 020  
**Firma navn:** NORTH OFFSHORE AS  
**Redigert navn:** NORTH OFFSHORE AS  
**Historisk navn:** TFDS OFFSHORE AS  
 TFDS OFFSHORE AS  
 TROMS OFFSHORE INVEST AS  
 TROMS OFFSHORE INVEST AS  
**Forretningsadresse:** Strandvelen 106 Lanes Center  
 9008 TROMSØ  
**Postadresse:** Postboks 6155  
 9291 TROMSØ  
**Kommune:** TROMSØ  
**Fylke:** Troms fylke  
**Telefonnummer: \*** 77679950  
**Mobil:**  
**Telefaks:** 77679977  
**Registrert e-post:** offshore@offshore.tfds.no  
**Hjemmeside:**  
**Selskapsform:** Aksjeselskap  
**Bransje:** 61101 Utenriks sjøfart  
 61106 Slepebåter og forsyningskip  
**Antall ansatte:** 9 (25.09.2007)  
 28 (27.03.2007)  
 32 (26.09.2006)  
 45 (24.01.2006)  
 56 (2004)  
 112 (2003)  
 2 (2002)  
 2 (2001)  
 85 (2000)  
**Aksjekapital:** 184.652  
**Kontaktperson:** Hoel Svein Harald  
**F.dato:** 17.07.49  
**Funksjon:** DAGL  
**Stiftelsesdato:** 27.03.1981  
**Registreringsdato:** 06.10.1989  
**Vedtektsdato:** 29.10.2007  
**Register:** Foretaksregisteret (06.10.1989)  
**Registrert i MVA: \*** Ja  
**Revisor:** PRICEWATERHOUSECOOPERS AS 987 009 713

**SIGNATUR OG PROKURA \***

**Signatur:**

Styrets leder og ett styremedlem i fellesskap.

**Prokura:**

**ROLLE- OG STYREINFORMASJON \***

Sist endret 2007.11.06. Se kunngjøringen.

Rolle	Andel	Valgt av	Person/firma
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Rett kopi bekreftes

Certified copy

Kristian Lindhartsen  
Advokatfullmektig

Daglig leder / admin. dir.  
Styremedlem  
Styrets leder  
Vara medlem

Hoel Svein Harald (17.07.49)  
Mortvedt Østen (10.02.64)  
Hoel Svein Harald (17.07.49)  
Pedersen Ingunn Anita (29.08.60)

#### UNDERENHETER/AVDELINGER

Dette firma har følgende underenhet/avdeling:

Orgnr	Navn
872639322	NORTH OFFSHORE AS

#### AKSJONÆRER \*\*

Orgnr	Navn	Eierandel
966591560	HOEL HOLDING AS	60,00%
989072021	ØSTEN AS	40,00%

#### AKSJEPOSTER/EIERANDELER \*\*

Orgnr	Navn	Eierandel
987916869	NORTH BROKERS & AGENCY AS	100,00%
988166588	TROMS OFFSHORE AS	100,00%
988673544	TROMS FALKEN AS	20,00%
990555346	TROMS OFFSHORE MPSV AS	100,00%

#### KONSERNRELASJON \*\*

OrgNr	Navn	Eierandel
> 966591560	HOEL HOLDING AS	0,00%
>> 929987020	NORTH OFFSHORE AS	60,00%
>>> 987916869	NORTH BROKERS & AGENCY AS	100,00%
>>> 988166588	TROMS OFFSHORE AS	100,00%
>>> 990555346	TROMS OFFSHORE MPSV AS	100,00%

\* Dette er informasjon vi får fra andre kilder enn Brønnøysundregistrene. Aksjonærer, konsernrelasjon, betalingserfaring og pant er informasjon vi mottar fra D&B. Aksjer og Obligasjoner mottar vi fra Oslo Børs

\* Telefonnummer oppdateres fra Brønnøysundsregistrene.

## **EXHIBIT 5**

**RAVNINFO****NORTH OFFSHORE AS****Basic facts**

Number of Incorporation:	929 987 020
Business name:	North Offshore AS
Edited name:	North Offshore AS
Historical names:	TFDS Offshore AS TFDS Offshore AS Troms Offshore Invest AS Troms Offshore Invest AS
Business address:	Strandveien 106 Lanes Center 9008 Tromsø
Postal address:	P.O.Box 6155 9291 Tromsø
City	Tromsø
Community	Troms community
Phone:	77 67 99 50
Mobile:	
Fax:	77 67 99 50
Registered email:	<a href="mailto:offshore@offshore.tfds.no">offshore@offshore.tfds.no</a>
Home page:	
Type of company:	Private Limited Company
Business:	61101 Foreign shipping 61106 Tugboats and supply ships
Number of employees:	9 (25.09.2007) 28 (27.03.2007) 32 (26.09.2006) 45 (24.01.2006) 56 (2004) 112 (2003) 2 (2002) 2 (2001) 85 (2000)
Share capital:	184,652
Person of contact:	Hoel Svein Harald
Date of birth:	17.07.49
Function:	CO
Date of incorporation:	27.03.1981
Date of register:	06.10.1989
Date of articles of association:	29.10.2007
Corporate register:	Foretaksregisteret (06.10.1989)
VTA register:	Yes
Accountant:	PriceWaterhouseCoopers AS 987 009 713

**Signature and proxy**

Signature: Chairman of the board and a board member jointly

Proxy:

**Role and board information**

Role:	Share	Chosen by	Person/company
CO			Hoel Svein Harald (17.07.49)
Member of board of director			Mortvedt Østen (10.02.64)
Chairman of the board of director			Hoel Svein Harald (17.07.49)
Deputy board of member of director			Pedersen Ingunn Anita (29.08.60)

**Subsidiaries/departments**

This company has the following subsidiaries/departments:

Number of incorporation	Name
872639322	North Offshore AS

**Shareholders**

Number of incorporation	Name	Share of ownership
966591560	Hoel Holding AS	60,00 %
989072021	Østen AS	40,00 %

**Post of share/ownership**

Number of incorporation	Name	Share of ownership
987916869	North Brokers & Agency AS	100,00 %
988166588	Troms Offshore AS	100,00 %
988673544	Troms Falken AS	20,00 %
990555346	Troms Offshore MPSV AS	100,00 %

**Group of company**

Number of incorporation	Name	Share of ownership
966591560	Hoel Holding AS	0,00 %
929987020	North Offshore AS	60,00 %
987916869	North Brokers & Agency AS	100,00 %
988166588	Troms Offshore AS	100,00 %
990555346	Troms Offshore MPSV AS	100,00 %



## **EXHIBIT 6**

Michael J. Frevola (MJF 8359)  
Christopher R. Nolan (CRN 4438)  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200

ATTORNEYS FOR PLAINTIFF  
NORTH OFFSHORE AS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NORTH OFFSHORE AS,

Plaintiff,

-against-

ROLV BERG DRIVE AS,

Defendant.

07 Civ. 3095 (SHS)

**AFFIRMATION OF  
SVEIN HOEL PURSUANT TO  
28 U.S.C. § 1746 IN SUPPORT  
OF PLAINTIFF'S OPPOSITION  
TO DEFENDANT'S MOTION  
FOR COUNTERSECURITY**

I, SVEIN HOEL, hereby affirm as follows:

1. I am the Managing Director of North Offshore AS, previously known by the name TFDS Offshore AS. Although certain events related below occurred while North Offshore was named TFDS Offshore AS, Plaintiff will use "North Offshore" throughout for ease of reference. The facts provided herein are based on my own personal knowledge.

2. I am providing this affirmation in support of my company's opposition to a motion filed by Rolv Berg Drive AS ("RBD") for countersecurity in the above-captioned proceeding.



### THE CHARTER PARTIES

3. My company entered into a time charter party with RDB on February 16, 2004 of the AHTS ALDOMA for a period of three years on the SUPPLYTIME 89 form (as amended). I annex as Exhibit 1 a true copy of the North Offshore/RBD time charter (the "Time Charter"). The term "AHTS" refers to the vessel's functions and uses in the offshore oil industry, namely acting as an Anchor Handling, Tug and Supply vessel.

4. At the commencement of the Time Charter, my company entered into a separate "side agreement" with RBD dated March 5, 2004 that provided RBD with a possibility of extending the charter period of the ALDOMA in certain circumstances. RBD's rights to extend the ALDOMA's charter under the side agreement, however, specifically were subject "to [North] Offshore securing further charter with the vessel's owner." I annex as Exhibit 2 a true copy of the "side agreement" dated March 5, 2004.

5. The ALDOMA's owner is Arktikmorneftegazrazvedka ("AMNGR"), a Russian company with offices in Murmansk, Russia. My company had the ALDOMA under bareboat charter from AMNGR during the initial portion of the Time Charter. My company entered into a renewed bareboat charter party with AMNGR for the ALDOMA commencing on March 6, 2006 for a period of 14 months until May 2007 on the SUPPLYTIME 89 form as suitably amended (the "Bareboat Charter"). The Bareboat Charter included 2 one year options. I annex as Exhibit 3 a true copy of the Bareboat Charter (which is dated May 12, 2005). The Bareboat Charter is dated ten months earlier than the commencement of that charter because RBD sought to induce AMNGR to breach its charter agreement with our company. Ultimately, AMNGR agreed to perform the Bareboat Charter, but RBD's interference caused AMNGR to demand (and forced us to agree to) an increased daily rate of hire.

6. The Bareboat Charter had a rider provision entitled "Profit Split" that addressed the payment of charter hire above a certain base rate provided in the Bareboat Charter. The "Profit Split" provision entitled AMNGR to additional compensation above the agreed base rate, which additional compensation would be 50% of the hire amounts earned by the ALDOMA on sub-charter above the agreed base rate. This provision was designed to ensure that the Bareboat Charter would remain economically reasonable to AMNGR in a rising market for offshore supply vessels such as the ALDOMA. A true copy of the "Profit Split" provision is provided in Exhibit 3 as the final page of that document.

7. Together with the Bareboat Charter, my company and AMNGR entered into a "side agreement" dated May 12, 2005 (the same date as the Bareboat Charter). I annex as Exhibit 4 a true copy of the AMNGR/North Offshore "side agreement" dated May 12, 2005. That agreement specifically addressed North Offshore's Time Charter with RBD and provided that extensions of the Time Charter would not be given "without the prior written consent of the Owner [AMNGR]." It also provided that AMNGR's written approval of North Offshore's new charter parties was required where AMNGR's profits would fall beneath US\$1,000 per day on its profit split with North Offshore.

8. RBD sought to charter the ALDOMA for additional time past May 2007. It is my understanding that RBD has claimed that the ALDOMA would have been used to fulfill a five year time charter that RBD claims that it entered with a company named Oil & Natural Gas Corp ("ONGC"). The ONGC invitation to tender, however, had several requirements that the ALDOMA could not fulfill, including being unable to perform anchor handling at the depth required in the ONGC tender (1200 meters). This specification was a significant requirement. Earlier this year, in April 2007, the AHTS BOURBON DOLPHIN attempted to pull an anchor

set at approximately 1100 meters, during which attempt the BOURBON DOLPHIN capsized and sank with a loss of over half her crew. The BOURBON DOLPHIN was a larger vessel than the ALDOMA and had a greater bollard pull capacity, but nevertheless sank attempting to perform an operation required by the ONGC tender. In my view, based on my 30 years of experience in the offshore supply vessel industry, the ALDOMA would not have satisfied the ONGC tender.

9. The ONGC tender also required a five year charter term. We could not offer RBD a five year term because we did not have the rights to the ALDOMA for that time period to sub-charter the ALDOMA to RBD.

**DISPUTES BETWEEN NORTH OFFSHORE AND RBD**

10. During RBD's Time Charter of the ALDOMA, disputes arose between my company and RBD. We commenced an arbitration against RBD in Norway seeking crew costs and costs relating to crew changes arising from improper acts by RBD under the Time Charter.

11. On September 1, 2006, the Norwegian arbitration panel found in favor of my company and awarded us damages for a variety of actions taken by RBD or costs incurred by us, including but not limited to (a) RBD's unilateral deduction of charter hire for unsupported crew costs, and (b) North Offshore's expenses related to the replacement of the ALDOMA's crew.

12. The Norwegian arbitration panel subsequently issued a second award on April 13, 2007 for additional claims we made against RBD. We received additional damages for a variety of actions taken by RBD or costs incurred by us, including but not limited to (a) RBD's unilateral deduction of charter hire for an alleged off-hire event lasting 7.82 days which the panel held to be unjustified, (b) RBD's unilateral deduction of hire for maintenance days



despite the Time Charter providing that such days were to count as on-hire periods, and (c) RBD's continued improperly-documented and deducted crew costs for the period between April and December 2006.

13. Since the April 13, 2007 award, the Time Charter has expired. At the time of the expiration of the Time Charter and continuing to date, RBD has not paid the final hire payments for the ALDOMA, amounting to a total of US\$748,521.00. In addition, the ALDOMA was not redelivered within the agreed redelivery range, and my company incurred US\$154,190 in additional expenses (largely fuel costs) incurred as a result of this redelivery outside of the agreed redelivery range. From these claims, my company has deducted the amount of US\$100,641.10 credited to RBD for the fuel remaining aboard the ALDOMA at the time of its redelivery, resulting in a net total principal claim of US\$802,069.90.

14. In connection with our claims of US\$802,069.90 against RBD, we requested that the same panel which issued the first two awards also decide these claims. In the event that the panel decided to not accept these claims, we also appointed an arbitrator on May 16, 2007 to arbitrate these claims against RBD. RBD did not appoint an arbitrator in response within the required time of 14 days. Last week, the panel from the previous awards decided not to accept jurisdiction over the remaining claims, therefore the newly appointed arbitrator will have jurisdiction over our claims of US\$802,069.90 against RBD.

#### NORTH OFFSHORE'S FINANCIAL CAPABILITIES

15. I understand that RBD has requested an order from the Court that my company post security on RBD's counterclaims in at least the amount of approximately US\$469,000.00. As the information provided below will demonstrate, it would be impossible for my company to comply with that order.

16. North Offshore is not a large company. It is not publicly traded. It has only one office and has only myself and my business partner as the company personnel. It has a current bank account balance of approximately US\$0. I annex as Exhibit 5 for the Court's review a Statement of Accounts Balance Sheet dated August 31, 2007 prepared by accounting personnel for my affiliate company, Troms Offshore AS, showing the company's assets and liabilities. Please note that the figures given are in Norwegian kroner, rather than U.S. dollars.

17. Because of the short time period given for our response to RBD's application for security, I was unable to get a certified independent accountant's confirmation of these figures, although we can obtain one for the Court if we are permitted several days to instruct the accountants and give them the opportunity to complete their review.

18. For the Court's guidance, I provide the following information regarding certain line items on the balance sheet. On page 1, the item "Other Operating Costs" in the amount of NK14,090,294 for 2007 in the first section (entitled Operating Revenues and Expenses) refers to a variety of items, the most significant of which are (a) bareboat hire for the ALDOMA (NK7,602,029); (b) administration expenses (NK571,971); (c) lube oil (NK478,374); (d) Vessel maintenance (NK891,141); (e) other administration expenses (lawyers etc.) (NK1,589,932); (f) traveling expenses (NK885,289); and (g) insurance (NK248,031). The specified items amount to more than NK12,000,000 of the total of NK14,090,294. I have attached as Exhibit 6 a true copy of the entire list of expenses comprising our operating costs, which is in Norwegian but provides a line item recitation of these expenses.



19. Turning to the immediately following section on page 1 (entitled Financial Income and Expenses), there is a line entry entitled "Other Financial Expenses" in the amount of NK586,487, which refers to (a) interest charges on open accounts payable in the amount of NK120,296 and (b) currency exchange loss dealing with the conversion of the U.S. dollar hire payments to Norwegian kroner in the amount of NK466,191.

20. Turning to page 2, in the first section (entitled Fixed Assets), there is a line item entitled "periodical maintenance" in the amount of NK7,239,342. This entry refers to the cost of the drydocking and repairs to the ALDOMA in order to keep it class-certified by Det Norske Veritas.

21. At the bottom of page 2, in the final section (entitled "Current Assets") the section entitled "other claims" refers to pre-paid expenses (mainly insurance) In that same section, for the "accounts receivable" amount of NK11,362,742, the claims against RBD (NK6.135.000) comprise over 50% of that amount.

22. On page 3, in the first section (entitled "Equity"), the line entry "other equity" refers to the earned equity from former years.

23. On page 3, in the second section (entitled "Liabilities"), the line entry "accounts payable" refers to debts owed to various suppliers/contractors (for example, the costs relating to the drydocking and repair of the ALDOMA in the amount of NK7,300,000). The "other short-term liabilities" line item refers to accrued expenses for which we have not yet received the invoices.

24. As my company's balance sheet shows, we have virtually no liquid assets by which we could post the security demanded by RBD's counterclaim. If the choice were given to

my company whether to post countersecurity or surrender our security against RBD, I would have to agree to surrendering our security against RBD. This is not because I wish to surrender that security, it is because posting security on RBD's claim is financially impossible for my company.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1<sup>st</sup> day of October, 2007 at the office of North Offshore AS, Tromsø, Norway.



SVEIN HOEL

# **EXHIBIT 1**




**Bilag**

Issued by The Documentary Committee of  
 The Baltic and International Maritime Council (BIMCO), Copenhagen  
 (First edition published 1974)  
 Revised 1988

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Adopted by  
 International Support Vessel Owners'  
 Association (ISVO), London

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 The Baltic and International Maritime Council (BIMCO), Copenhagen  
 September 1988

<b>1. Place and date</b> Tromsø 19 <sup>th</sup> of February 2004		<b>UNIFORM TIME CHARTER PARTY                  FOR OFFSHORE SERVICE VESSELS                  CODE NAME: "SUPPLYTIME 89"</b>		 PART I
<b>2. Owners/Place of business (Full style, address and telefax/telex no.) (Cl. 1(a))</b> TFD Offshore AS Strandvegen 108 P.O. box 8155 2201 Tromsø Norway Phone: +47 77 87 98 98 Fax: +47 77 87 98 77 E-mail: offshore@tfd.no		<b>3. Charterers/Place of business (Full style, address and telefax/telex no.) (Cl. 1(a))</b> Rolv Berg Drive AS Sandre Tollbodgate 15 P.O. box 86 2251 Tromsø Norway Phone: +47 77 86 86 86 Fax: +47 77 86 86 E-mail: drive@rbdnve.com		
<b>4. Vessel's name (Cl. 1(a))</b> AHTS Aldona	<b>5. Date of delivery (Cl. 2(a))</b> 20-31.03.2004	<b>6. Cancelling date (Cl. 2(a) and (c))</b> 31.03.2004		
<b>7. Port or place of delivery (Cl. 2(a))</b> Mumbai, India	<b>8. Port or place redelivery/notice of redelivery (Cl. 2(d))</b> Mumbai, India (i) Port or place of redelivery  15 days (ii) Number of days' notice of redelivery			
<b>9. Period of hire (Cl. 1(a))</b> 3 years firm	<b>10. Extension of period of hire (optional) (Cl. 1(b))</b> (i) Period of extension 15 days (ii) Advance notice for declaration of option (days)			
<b>11. Automatic extension period to complete voyage or well (Cl. 1(c))</b> As per work in progress. (i) Voyage or well (state which) 90 days. (ii) Maximum extension period (state number of days)	<b>12. Mobilisation charge (lump sum and when due) (Cl. 2(b)(i))</b> Included in the vessel's dayrate for the first 3 years charter hire. - See Clause 37 (i) Lump sum NA (ii) When due			
<b>13. Port or place of mobilisation (Cl. 2(b)(ii))</b> Valletta, Malta.	<b>14. Early termination of charter (state amount of hire payable) (Cl. 26(a))</b> As per state oil company rules and regulations (O.N.G.C.).			
<b>15. Number of days' notice of early termination (Cl. 26(a))</b> See box 14	<b>16. Demobilisation charge (lump sum) (Cl. 2(c) and (2.26(a))</b> Included in vessel's dayrate for the first 3 years charter hire.			

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*[Handwritten signature]*

## "SUPPLYTIME 88" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS

PART I

17. Area of operation (CL 5(a)) The continental shelf of India.		18. Employment of vessel restricted to (state nature of service(s)) (CL 5(a)) Anchor handling, towing, fire fighting, supply services, mud services and any other services that the vessel may safely undertake to perform. Always within the vessel's capabilities and certification.	
19. Charter hire (state rate and currency) (CL 10(a) and (d)) USD 8,500,- + USD 700,- (mud installation) + USD 330,- (mobil/demob). Total: USD 9,530,- per day the first three years.		20. Extension hire (if agreed, state rate) (CL 10(b)) USD 3,000,- USD 9000,- <i>SH</i>	
21. Invoicing for hire and other payments (CL 10(c)) (i) state whether to be issued in advance or arrears In Arrears (ii) state to whom to be issued if addresses other than stated in Box 2 As per box 2 (iii) state to whom to be issued if addresses other than stated in Box 2		22. Payments (state mode and place of payment; also state beneficiary and bank account) (CL 10(c)) As per owner's instruction To: SpareBank1 Nord-Norge Account no: 4729.91.10455 Swift code: snornn22 By: Swift transfer	
23. Payment of hire, bunker invoices and disbursements for Charterers' account (state maximum number of days) (CL 10(d)) 35 banking days from date of invoice		24. Interest rate payable (CL 10(e)) NA	25. Maximum audit period (CL 10(f)) 60 days.
26. Meals (state rate agreed) (CL 5(c)(i)) USD 10,- per meal	27. Accommodation (state rate agreed) (CL 5(c)(ii)) USD 12,- per person	28. Mutual Waiver of Recourse (optional, state whether applicable) (CL 12(i)) Yes	
29. Sublet (state amount of daily increment to charter hire) (CL 17(b)) NA		30. War (state name of countries) (CL 19(a)) Deleted	
31. General average (place of settlement - only to be filled in if other than London) (CL 21)  		32. Breakdown (state period) (CL 25(b)(vi)) 30 days	
33. Law and arbitration (state (CL 31(a) or 31(b) or 31(c), as agreed; if (CL 31(c)) agreed also state place of arbitration) (CL 31) Norwegian Law, arbitration in Oslo		34. Numbers of additional clauses covering special provisions, if agreed From Clause 37 to Clause 38	

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*SH*

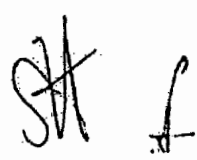
"SUPPLYTIME M" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS

PART I

<p>35. Names and addresses for notices and other communications required to be given by  <u>the Owners (CL 20)</u>  <u>As per box 3</u></p>	<p>36. Names and addresses for notices and other communications required to be given by  <u>the Charterers (CL 20)</u>  <u>As per box 2</u></p>
---	---

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the Charter consisting of PART I, including additional clauses if any agreed and stated in Box 34, and PART II as well as ANNEX "A" and ANNEX "B" as annexed to this Charter; in the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II and ANNEX "A" and ANNEX "B" to the extent of such conflict but no further. ANNEX "C" as annexed to this Charter is optional and shall only apply if expressly agreed and stated in Box 28.

<p>Signature (Owners)</p> 	<p>Signature (Charterers)</p> 
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## ANNEXURE - A

## Technical Specification of AHTS of not less than 9600 BHP - 1 No.

Sr.No	Parameter	ONGC Requirement	Bidder Specification
1	GENERAL		
1.1	Name of Vessel		MV ALDOMA
1.2	Name of owner		RESPONENT OWNER T.F.D.S. OFFSHORE AS
1.3	Flag		BAHAMAS
1.4	Port of registry		NASSAU
1.5	Place of build		NORWAY
1.6	Year of build		1983
1.7	Name of yard		Frances Mekriske, Sandefjord
1.8	Classification	ABS/DNV/BV/LRS/IRS/GL	DNV * 1A1 Δ Tug&Supply Vessel SF EO FIFI II ICE C
1.9	call sign/official No.		C6RD9
2	DIMENSIONS		
2.1	LOA [meters]		67,70 m
2.2	LBP [meters]		59,40 m
2.3	Breadth mld [meters]		14,50 m
2.4	Depth mld [meters]		5,97 m
2.5.1	Summer draught [meters]		5,35 mtr. Min. draft (Light ship) 3,5 mtr. Max. draft (Tropical) 6,08 mtr
2.5.2	Operating draught [meters]	Not more than 5.95 M at specified min DWT	5 m at 1000 DWT ( TOTAL DWT 2000S TON)
2.6	Clear deck Aft		407 m2
2.6.1	Length [meters]		37 mtrs
2.6.2	Breadth [meters]		11 mtrs
2.6.3	Area [sq. meters]	Not less than 300 sq. meters	407m2

3	<b>MACHINERY</b>			
3.1	Main Engines			
3.1.1	Number of Main Engines	Not less than 2 [two]		4
3.1.2	Make			Bergon Diesel
3.1.3	Model			KVMB 12
3.1.4	Max continuous rating (for all main engines together) at 100% - NOMINAL	Not less than 9600 BHP		12240 BHP
3.1.5	Year of build	New at the time of installation onboard the Vessel		1983 (New at the time of installation onboard the Vessel)
3.2	Main Propulsion			
3.2.1	Number of propellers	Not less than 2 [two]		2 x Ulstein, 180 Rpm
3.2.2	Type	Shrouded CPP preferred		CPP
3.2.3	Propeller diameter [mtrs]			3600 mm
3.2.4	Propeller make			ULSTEIN PROPELLER
3.3	Side Thrusters			3
3.3.1	Number of bow thrusters	Not less than 2 [one]		2
3.3.2	Number of stern thrusters			1
3.3.3	Rating of BTs [KW]			1180 KW
3.3.4	Rating of STs [KW]			890 KW
3.4	Generators			
3.4.1	Number of generators	At least three independent power sources		4 Independent Power Sources (2 x Shaftgenerators, Siemens 3200Kw, 2 x
3.4.2	Total rating [KVA]			3690 KVA
3.4.3	Voltage rating			380V
3.4.4	Frequency [Hz]			50 Hz
3.5	Steering gear			
3.5.1	Type	Hydraulic preferred		Hydraulic, Tennford I-2X (18M300/2GM620)-FU



3.5.2	Number of rudders	Not less than 2 [two]	2 Tenniford
4	<b>PERFORMANCE</b>		
4.1	Trial speed [knots]		16,5 knots
4.2	Cruising speed [knots]		12-15 knots
4.3	Bollard pull [Max cont]	Not less than 105 Metric Tons	140 Tons
4.4	Fuel consumption [KI/day]		
4.4.1	Standby		7,1 m3
4.4.2	Underway		18 m3
4.4.3	Towing		44,7 m3
5	<b>TOWING AND ANCHOR HANDLING</b>		
5.1	Winch		
5.1.1	Type	Min. Double drum water fall hydraulic	Brattvaag SL 250 (Double drum Water fall hydraulic)
5.1.2	Make		Brattvaag
5.1.3	Model		SL 250W / BSL 250 WX
5.1.4	Drum capacity	For a total length of not less than 2,000 mtrs., 72mm/76mm wire rope.	2400 mtrs / 72mm
5.1.5	Work wire	Total length of 2000 mtrs. or more of 72/76mm required	2400 mtrs / 72mm
5.1.6	Drum speed [M/min]		60 ton @ 28mtr/min & 250 ton @ 6,4 mtr/min
5.1.7	Winch stall capacity	Not less than 250 T	250 ton
5.1.8	Line pull		350 ton
5.2	Wildcat for chains		
5.2.1	Suitable for 70 mm Chain		76mm / 83mm
5.2.2	Chain lockers	Not less than 2 for 70mm stud-link chains	600 m 3 1/4" chain
5.2.3	Chain locker capacity [cubic meters]	2 X 90 cu mtrs.	203 cu. Mtrs.
5.3	Thruster and shock absorber		Karm 130318/130554, 240 ton.

5.3	LOW PRESS AIR SUPPLY JAWS				Karm O 350/130318/130554, 240 ton.
5.4	Spare Storage				Two storage drums. One can hold 1200m. 70 mm. Wire and the other 1000 m. 64 mm. We
5.5	Stern roller				Usteln 3,66 mtr x 2,50 mtr, 350 ton SWL
5.6	Tugger winches				2 Brattvaag WMA 1010
5.7	Capstans [on aft deck]			2	
6	NAVIGATION AND COMMUNICATION EQUIPMENT				
6.1	Gyrocompass	REQUIRED			Anshutz Standard 20
6.2	Magnetic compass	REQUIRED			Standard
6.3	Echo sounder	REQUIRED			Simrad / ED161
6.4	Auto pilot	REQUIRED			Racal Decca Pilot 450
6.5	Radar	REQUIRED			2 Furuno ARPA, X and S band, 72 nm
6.6	SSB Radio transceiver/ GMDSS	REQUIRED			JRC (GMDSS area 4) J88-800
6.7	Marine VHF transceiver	REQUIRED			2 - JRC/JHS-324 & Sailor/RT2048
6.8	GPS	REQUIRED			Phillips MK10, Furuno GP 80
6.9	Portable VHF	REQUIRED			5 - 3 x Jotron/Tyon & 2 x Motorola GP 300
6.10	INMAR SAT	REQUIRED			Satpol/Phillips Safecom C
7	ACCOMMODATION				
7.1	Crew complement			17	
7.2	For charterer's use	Suitable accommodation for five persons required			7
8	CAPACITIES				
8.1	Deck cargo		Not less than 500 Ton		750 ton
8.2	Deck-loading [T/sq mtrs]				6 T/m <sup>2</sup>
8.3	Fuel (m <sup>3</sup> )				1041 m <sup>3</sup>

8.4	Drill water (m <sup>3</sup> )		516 m <sup>3</sup>
8.5	Pot water (m <sup>3</sup> )		289 m <sup>3</sup>
8.6	Ballast water (m <sup>3</sup> )		516 m <sup>3</sup>
8.7	Liquid mud (m <sup>3</sup> )	REQUIRED	119 m <sup>3</sup>
8.8	Dry bulk (m <sup>3</sup> )		196 m <sup>3</sup>
8.9	Dead weight [Tons]	Not less than 1000 Tons at 5.95 M draught	5 m at 1000 DWT ( TOTAL DWT 2005 TON)
8.1	4" Cam lock couplings	Required on all hoses:	Yes
9	RIGGING EQUIPMENT		
	WILL BE PROVIDED		
10	FIFT		
11	VESSEL IS FITTED WITH FT-FI Class-II		
	OTHER CAPABILITIES		
	Certificates	1. Certificate of Registry	ENCLOSED
		2. Class Certificate (H&M)	ENCLOSED
		3. Bollard Pull Certificate	ENCLOSED
		4. Q.A. PLAN	ENCLOSED
		5. DEAD WEIGHT SCALE	ENCLOSED

ANNEX "B" to Uniform Time Charter Party for Offshore Service Vessels  
Code Name: "SUPPLYTIME 89" - dated



INSURANCE

Insurance policies (as applicable) to be procured and maintained by the Owners under Clause 14:

(1) Marine Hull Insurance - Hull and Machinery Insurance shall be provided with limits equal to those normally carried by the Owners for the Vessel.

(2) Protection and Indemnity (Marine Liability) Insurance - Protection and Indemnity or Marine Liability Insurance shall be provided for the Vessel with a limit equal to the value under paragraph 1 above or U.S. \$5 million, whichever is greater, and shall include but not be limited to coverage for crew liability, third party bodily injury and property damage liability, including collision liability, towage liability (unless carried elsewhere).

(3) General Third Party Liability Insurance - Coverage shall be for:  
Bodily Injury per person  
Property Damage per occurrence.

(4) Workmen's Compensation and Employer's Liability Insurance for Employees - Covering non-employees for statutory benefits as set out and required by local law in area of operation or area in which the Owners may become legally obliged to pay benefits.

(5) Comprehensive General Automobile Liability Insurance - Covering all owned, hired and non-owned vehicles, coverage shall be for:  
Bodily Injury According to the local law.  
Property Damage In an amount equivalent to single limit per occurrence.

(6) Such other insurances as may be agreed.

*[Handwritten signature]*



ANNEX "C" to Uniform Time Charter Party for Offshore Service Vessels  
Code Name: "SUPPLYTIME 89" - dated



AGREEMENT FOR MUTUAL INDEMNITY AND WAIVER OF RECOURSE

(Optional, only applicable if stated in Box 28 in PART I)

This Agreement is made between the Owners and the Charterers and is premised on the following:

- (a) The Charterers and the Owners have entered into a contract or agreement dated as above regarding the performance of work or service in connection with the Charterers' operations offshore ("Operations");
- (b) The Charterers and the Owners have entered into, or shall enter into, contracts or agreements with other contractors for the performance of work or service in connection with the Operations;
- (c) Certain of such other contractors have signed, or may sign, counterparts of this Agreement or substantially similar agreements relating to the operations ("Signatory" or collectively "Signatories"); and
- (d) The Signatories wish to modify their relationship at common law and avoid entirely disputes as to their liabilities for damage or injuries to their respective property or employees;

In consideration of the premises and of execution of reciprocal covenants by the other Signatories, the Owners agree that:

1. The Owners shall hold harmless, defend, indemnify and waive all rights of recourse against the other Signatories and their respective subsidiary and affiliate companies, employees, directors, officers, servants, agents, invitees, vessel(s), and insurers, from and against any and all claims, demands, liabilities or causes of action of every kind and character, in favour of any person or party, for injury to, illness or death of any employee of or for damage to or loss of property owned by the Owners (or in possession of the Owners by virtue of an arrangement made with an entity which is not a Signatory) which injury, illness, death, damage or loss arises out of the Operations, and regardless of the cause of such injury, illness, death, damage or loss even though caused in whole or in part by a pre-existing defect, the negligence, strict liability or other legal fault of other Signatories.
2. The Owners (including the Vessel) shall have no liability whatsoever for injury, illness or death of any employee of another Signatory under the Owners' direction by virtue of an arrangement made with such other Signatory, or for damage to or loss of property of another Signatory in the Owners' possession by virtue of an arrangement made with such other Signatory. In no event shall the Owners (including the Vessel) be liable to another Signatory for any consequential damages whatsoever arising out of or in connection with the performance or non-performance of this Agreement, including, but not limited to, loss of use, loss of profits, shut-in or loss of production and cost of insurance.

3. The Owners undertake to obtain from their insurers a waiver of rights of subrogation against all other Signatories in accordance with the provisions of this Agreement governing the mutual liability of the Signatories with regard to the Operations.
4. The Owners shall attempt to have those of their sub-contractors which are involved in the Operations become Signatories and shall promptly furnish the Charterers with an original counterpart of this Agreement or of a substantially similar agreement executed by its sub-contractors.
5. Nothing contained in this Agreement shall be construed or held to deprive the Owners or the Charterers or any other Signatory as against any person or party, including as against each other, of any right to claim limitation of liability provided by any applicable law, statute or convention, save that nothing in this Agreement shall create any right to limit liability. Where the Owners or the Charterers or any other Signatory may seek an indemnity under the provisions of this Agreement as against each other in respect of a claim brought by a third party, the Owners or the Charterers or any other Signatory shall seek to limit their liability against such third party.
6. The Charterers shall provide the Owners with a copy of every counterpart of this Agreement or substantially similar agreement which is executed by another Signatory pertaining to the Operations; and shall, in signing this, and in every counterpart of this Agreement, be deemed to be acting as agent or trustee for the benefit of all Signatories.
7. This Agreement shall inure to the benefit of and become binding on the Owners as to any other Signatories on the later of the date of execution by the Owners and the date of execution of a counterpart of this Agreement or a substantially similar agreement by such other Signatory pertaining to the Operations.
8. Any contractor, consultant, sub-contractor, etc., performing work or service for the Charterers or another Signatory in connection with the Operations which has not entered into a formal contract for the performance of such work or service may nevertheless become a Signatory by signing a counterpart of this Agreement or a substantially similar agreement which shall govern, as to the subject of this Agreement, the relationship between such new Signatory and the other Signatories and also by extension its relations with the Charterers.
9. This Agreement may be executed in any number of counterparts or substantially similar agreements as necessary but all such counterparts shall together constitute one legal instrument.

SH A



**ANNEX "D" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS  
CODE NAME: "SUPPLYTIME 89" -DATED**

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**OWNERS VESSEL MARINE CREW**

**MARINE CREW**

Provided by Owners

*[Handwritten signature]*

## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

1. Period
- (a) The Owners stated in Box 2 let and the Charterers stated in Box 3 hire the Vessel named in Box 4, as specified in ANNEX "A" (hereinafter referred to as "the Vessel"), for the period as stated in Box 5 from the time the Vessel is delivered to the Charterers.
- (b) Subject to Clause 10(b), the Charterers have the option to extend the Charter Period in direct continuation for the period stated in Box 10(b), but such an option must be declared in accordance with Box 10(b).
- (c) The Charter Period shall automatically be extended for the time required to complete the voyage or work (whichever is stated in Box 11(b)) in progress, such time not to exceed the period stated in Box 11(b).
2. Delivery and Redelivery
- (a) **Delivery.** Subject to sub-clause (b) of this Clause the Vessel shall be delivered by the Owners free of cargo and with clean tanks at any time between the date stated in Box 5 and the date stated in Box 6 at the port or place stated in Box 7 where the Vessel can safely lie always afloat.
- (b) **Mobilisation.** (i) The Charterers shall pay a lump sum as stated in Box 12 without discount by way of mobilisation charge in consideration of the Owners giving delivery at the port or place stated in Box 7. The mobilisation charge shall not be affected by any change in the port or place of mobilisation from that stated in Box 12.
- (ii) Should the Owners agree to the Vessel loading and transporting cargo and/or undertaking any other service for the Charterers en route to the port of delivery or from the port of redelivery, then all terms and conditions of this Charter Party shall apply to such loading and transporting and/or other service exactly as if performed during the Charter Period excepting only that any lump sum freight agreed in respect thereof shall be payable on shipment or commencement of the service as the case may be, the Vessel and/or goods lost or not lost.
- (c) **Cancellation.** - If the Vessel is not delivered by midnight local time on the cancelling date stated in Box 5, the Charterers shall be entitled to cancel this Charter Party. However, if despite the exercise of due diligence by the Owners, the Owners will be unable to deliver the Vessel by the cancelling date, they may give notice in writing to the Charterers at any time prior to the delivery date as stated in Box 5, and shall state in such notice the date by which they will be able to deliver the Vessel. The Charterers may within 24 hours of receipt of such notice give notice in writing to the Owners cancelling this Charter Party. If the Charterers do not give such notice, then the later date specified in the Owners' notice shall be substituted for the cancelling date for all the purposes of this Charter Party. In the event the Charterers cancel the Charter Party, it shall terminate on terms that neither party shall be liable to the other for any losses incurred by reason of the non-delivery of the Vessel or the cancellation of the Charter Party.
- (d) **Redelivery.** - The Vessel shall be redelivered on the expiration or earlier termination of this Charter Party free of cargo and with clean tanks at the port or place as stated in Box 8 or such other port or place as may be mutually agreed. The Charterers shall give not less than the number of days notice in writing of their intention to redeliver the Vessel, as stated in Box 8(b).
- (e) **Demobilisation.** - The Charterers shall pay a lump sum without discount in the amount as stated in Box 13 by way of demobilisation charge which amount shall be paid on the expiration or on earlier termination of this Charter Party.
3. Condition of Vessel
- (a) The Owners undertake that at the date of delivery under this Charter Party the Vessel shall be of the description and classification as specified in ANNEX "A", attached hereto, and undertake to so maintain the Vessel during the period of service under this Charter Party.
- (b) The Owners shall before and at the date of delivery of the Vessel and throughout the Charter Period exercise due diligence to make and maintain the Vessel tight, staunch, strong in good order and condition and, without prejudice to the generality of the foregoing, in every way fit to operate effectively at all times for the services as stated in Clause 5.
4. Survey
- The Owners and the Charterers shall jointly appoint an independent surveyor for the purpose of determining and agreeing in writing the condition of the Vessel, any anchor handling and towing equipment specified in Section 5 of ANNEX "A", and the quality and quantity of fuel, lubricants and water at the time of delivery and redelivery hereunder. The Owners and the Charterers shall jointly share the time and expense of such surveys.
5. Employment and Area of Operation
- (a) The Vessel shall be employed in offshore activities which are lawful in accordance with the law of the place of the Vessel's flag and/or registration and of the place of operation. Such activities shall be restricted to the service(s) as stated in Box 16, and to voyages between any good and safe port or place and any place or offshore unit where the Vessel can safely lie always afloat within the Area of Operation as stated in Box 17 which shall always be within Institute Warranty Limits and which shall in no circumstances be exceeded without prior agreement and adjustment of the hire and in accordance with such other terms as appropriate to be agreed; provided always that the Charterers do not warrant the safety of any such port or place or offshore unit but shall exercise due diligence in issuing their orders to the Vessel as if the Vessel were their own property and having regard to her capabilities and the nature of her employment. Unless otherwise agreed, the Vessel shall not be employed as a diving platform.
- (b) Relevant permission and licences from responsible authorities for the Vessel to enter, work in and leave the Area of Operation shall be obtained by the Charterers and the Owners shall assist, if necessary, in every way possible to secure such permission and licences.
- (c) **The Vessel's Space.** - The whole reach and burden and decks of the Vessel shall throughout the Charter Period be at the Charterers' disposal reserving proper and sufficient space for the Vessel's Master, Officers, Crew, tackle, apparel, furniture, provisions and stores. The Charterers shall be entitled to carry, so far as space is available and for their purposes in connection with their operations:
- (i) Persons other than crew members, other than fare paying, and for such purposes to make use of the Vessel's available accommodation not being used on the voyage by the Vessel's Crew. The Owners shall provide suitable provisions and regulations for such persons for which the Charterers shall pay at the rate as stated in Box 26 per meal and at the rate as stated in Box 27 per day for the provision of bedding and services for persons using berth accommodation.
- (ii) Lawful cargo whether carried on or under deck.
- (iii) Explosives and dangerous cargo, whether in bulk or packaged, provided proper notification has been given and such cargo is marked and packed in accordance with the national regulations of the Vessel and/or the International Maritime Dangerous Goods Code and/or other pertinent regulations. Failing such proper notification, marking or packing the Charterers shall indemnify the Owners in respect of any loss, damage or liability whatsoever and howsoever arising therefrom. The Charterers accept responsibility for any additional expenses (including reimbursement expenses) incurred by the Owners in relation to the carriage of explosives and dangerous cargo.
- (iv) Hazardous and noxious substances, subject to Clause 12(c), proper notification and any pertinent regulations.
- (v) **Lay-up of Vessel.** - The Charterers shall have the option of laying up the Vessel at an agreed safe port or place for all or any portion of the Charter Period in which case the hire hereunder shall continue to be paid but, if the period of such lay-up exceeds 30 consecutive days there shall be credited against such hire the amount which the Owners shall reasonably have saved by way of reduction in expenses and overheads as a result of the lay-up of the Vessel.
6. Master and Crew
- (a) (i) The Master shall carry out his duties promptly and the Vessel shall render all reasonable services within her capabilities by day and by night and at such times and on such schedules as the Charterers may reasonably require without any obligations of the Charterers to pay to the Owners or the Master, Officers or the Crew of the Vessel any excess or overtime payments. The Charterers shall limit the Master with all instructions and sailing directions and the Master and Engineer shall keep full and correct logs accessible to the Charterers or their agents.
- (ii) The Master shall sign cargo documents as and in the form presented, the same, however, not to be Bills of Lading, but receipts which shall be non-negotiable documents and shall be marked as such. The Charterers shall indemnify the Owners against all consequences and liabilities arising from the Master, Officers or agents signing, under the direction of the Charterers, those cargo documents or other documents inconsistent with this Charter Party or from any irregularity in the papers supplied by the Charterers or their agents.
- (b) The Vessel's Crew if required by Charterers will connect and disconnect electric cables, fuel, water and pneumatic hoses when placed on board the Vessel in port as well as alongside the offshore unit; will operate the machinery on board the Vessel for loading and unloading cargoes; and will hook and unhook cargo on board the Vessel when loading or discharging alongside offshore units. If the port regulations or the seaman and/or labour

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**PART II**  
**"SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels**

units do not permit the Crew of the Vessel to carry out any of this work, then the Charterers shall make, at their own expense, whatever other arrangements may be necessary, always under the direction of the Master.	144	10. Hire and Payments.	214
(c) If the Charterers have reason to be dissatisfied with the conduct of the Master or any Officer or member of the Crew, the Owners on receiving particulars of the complaint shall promptly investigate the matter and if the complaint proves to be well founded, the Owners shall as soon as reasonably possible make appropriate changes in the appointment.	145	(a) <u>Hire</u> . - The Charterers shall pay Hire for the Vessel at the rate stated in Box 216	216
(d) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, their Master, Officers and Crew. The Vessel will be operated and the services hereunder will be rendered as requested by the Charterers, subject always to the exclusive right of the Owners or the Master of the Vessel to determine whether operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the Owners are deemed to be an independent contractor, the Charterers being concerned only with the results of the services performed.	146	18 per day or pro rata for part thereof from the time that the Vessel is delivered to the Charterers until the expiration or earlier termination of this Charter Party.	217
	147	(b) <u>Extension Hire</u> . - If the option to extend the Charter Period under Clause 10(a) is exercised, Hire for such extension shall, unless stated in Box 220, be mutually agreed between the Owners and the Charterers.	218
	148	(c) <u>Adjustment of Hire</u> . - The rate of Hire shall be adjusted to reflect documented changes, after the date of entering into the Charter Party or the date of commencement of employment, whichever is earlier, in the Owners' costs arising from changes in the Charterers' requirements or regulations governing the Vessel under its Crew or this Charter Party.	219
	149	(d) <u>Freighting</u> . - All invoices shall be issued in the contract currency stated in Box 18. In respect of reimbursable expenses incurred in currencies other than the contract currency, the rate of exchange into the contract currency shall be that quoted by the Central Bank of the country of such other currency as at the date of the Owners' invoice. Invoices covering Hire and any other payments due shall be issued monthly as stated in Box 216(i) or at the expiration or earlier termination of this Charter Party. Notwithstanding the foregoing, bunkers and lubricants on board at delivery shall be invoiced at the time of delivery.	220
	150	(e) <u>Payments</u> . - Payments of Hire, bunker invoices and disbursements for the Charterers' account shall be received within the number of days stated in Box 22 from the date of receipt of the invoice. Payment shall be made in the contract currency in full without discount to the account stated in Box 22. However any advances for disbursements made on behalf of and approved by the Owners may be deducted from Hire due.	221
	151	If payment is not received by the Owners within 5 banking days following the due date the Owners are entitled to charge interest at the rate stated in Box 24 on the amount outstanding from and including the due date until payment is received.	222
	152	When an invoice is disputed, the Charterers shall in any event pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed portion provided that such portion is reasonably disputed and the Charterers specify such reason. Interest will be chargeable at the rate stated in Box 24 on such disputed amounts where resolved in favour of the Owners. Should the Owners prove the validity of the disputed portion of the invoice, balance payment shall be received by the Owners within 5 banking days after the dispute is resolved. Should the Charterers' claim be valid, a corrected invoice shall be issued by the Owners.	223
	153	In default of payment as herein specified, the Owners may require the Charterers to make payment of the amount due within 5 banking days of receipt of notification from the Owners, failing which the Owners shall have the right to withdraw the Vessel without prejudice to any claim the Owners may have against the Charterers under this Charter Party.	224
	154	While payment remains due the Owners shall be entitled to suspend the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and Hire shall continue to accrue and any such expenses resulting from such suspension shall be for the Charterers' account.	225
	155	(f) <u>Audit</u> . - The Charterers shall have the right to appoint an independent chartered accountant to audit the Owners' books directly related to work performed under this Charter Party at any time after the conclusion of the Charter Party, up to the expiry of the period stated in Box 25, to determine the validity of the Owners' charges hereunder. The Owners undertake to make their records available for such purposes at their principal place of business during normal working hours. Any discrepancies discovered in payments made shall be promptly resolved by invoice or credit as appropriate.	226
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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

the request of the Charterers;	287	arising out of or in connection with such loss, damage, liability, personal	354
(v) detention in consequence of being driven into port or to anchorage	288	injury or death.	355
through stress of weather or trading to shallow harbours or to river or	289	(c) <b>Consequential Damages.</b> - Neither party shall be liable to the other for, and	356
ports with bars or suffering an accident to her cargo, when the expenses	290	each party hereby agrees to protect, defend and indemnify the other against,	357
resulting from such detention shall be for the Charterers' account,	291	any consequential damages whatsoever arising out of or in connection with	358
however incurred;	292	the performance or non-performance of this Charter Party, including, but not	359
(vi) detention or damage by loss;	293	limited to, loss of use, loss of profit, shut-in or loss of production and cost of	360
(vii) any act or omission of the Charterers, their servants or agents.	294	insurance.	361
(b) <b>Liability for Vessel not Working.</b> - The Owners' liability for any loss,	295	(d) <b>Limitations.</b> - Nothing contained in this Charter Party shall be construed or	362
damage or delay sustained by the Charterers as a result of the Vessel being	296	held to deprive the Owners or the Charterers, as against any person or party,	363
prevented from working by any cause whatsoever shall be limited to	297	including or against each other, of any right to claim limitation of liability	364
suspension of hire.	298	provided by any applicable law, statute or convention, save that nothing in	365
(c) <b>Maintenance and Dredging.</b> - Notwithstanding sub-clause (a) hereof, the	299	this Charter Party shall create any right to limit liability. Where the Owners or	366
Charterers shall grant the Owners a maximum of 24 hours on hire, which shall	300	the Charterers may seek an indemnity under the provisions of this Charter	367
be cumulative, per month or pro rata for part of a month from the	301	Party or against each other in respect of a claim brought by a third party, the	368
commencement of the Charter Period for maintenance and repairs including	302	Owners or the Charterers shall seek to limit their liability against such third	369
dredging (hereinafter referred to as "maintenance allowance"). The	303	party.	370
accumulated maintenance days shall however at any time not exceed six (6)		(e) <b>Arbitration Clause.</b> - (i) All exceptions, exemptions, defenses, immunities,	371
days: if the accumulated time is not utilized within six (6) months it would		limitations of liability, indemnities, privileges and conditions granted or	372
automatically lapse and will not be carried forward.		provided by this Charter Party or by any applicable statute, rule or regulation	373
The Vessel shall be drydocked at regular intervals. The Charterers shall place	304	for the benefit of the Charterers shall also apply to and be for the benefit of the	374
Vessel at the Owners' disposal clean of cargo, at a port (to be nominated	305	Charterers' parent, affiliated, related and subsidiary companies; the	375
by the Owners at a later date) having facilities suitable to the Owners for the	306	Charterers' contractors, sub-contractors, clients, joint venturers and joint	376
purpose of such drydocking.	307	interest owners (always with respect to the job or project on which the Vessel	377
During reasonable voyage time taken in transit between such port and Area	308	is employed); their respective employees and their respective underwriters.	378
of Operation the Vessel shall be on hire and such time shall not be counted	309	(f) All exceptions, exemptions, defenses, immunities, limitations of liability,	379
against the accumulated maintenance allowance.	310	indemnities, privileges and conditions granted or provided by this Charter	380
Hire shall be suspended during any time taken in maintenance repairs and	311	Party or by any applicable statute, rule or regulation for the benefit of the	381
drydocking in excess of the accumulated maintenance allowance.	312	Owners shall also apply to and be for the benefit of the Owners' parent,	382
In the event of less time being taken by the Owners for repairs and drydocking	313	affiliated, related and subsidiary companies, the Owners' sub-contractors,	383
or alternatively, the Charterers not making the Vessel available for all or part	314	the Vessel, its Master, Officers and Crew, its registered owner, its operator, its	384
of this time, the Charterers shall, upon expiration or earlier termination of the	315	derivative charterer(s), their respective employees and their respective	385
Charter Party, pay the equivalent of the daily rate of Hire then prevailing in	316	underwriters.	386
addition to Hire otherwise due under this Charter Party in respect of all such	317	(g) The Owners or the Charterers shall be deemed to be acting as agent or	387
time not so taken or made available.	318	trustee of and for the benefit of all such persons and parties set forth above,	388
Upon commencement of the Charter Period, the Owners agree to furnish the	319	but only for the limited purpose of contacting for the extension of such	389
Charterers with the Owners' proposed drydocking schedule and the	320	benefits to such persons and parties.	390
Charterers agree to make every reasonable effort to assist the Owners in	321	(h) <b>Mutual Waiver of Recourse (Optional, only applicable if stated in Box 28, but</b>	391
adhering to such predetermined drydocking schedule for the Vessel. It is	322	regardless of whether this option is exercised the other provisions of <b>Clause 12</b>	392
understood between Owner and Charter that regular dry-docking is not		shall apply and shall be paramount.	393
scheduled to take place during the first period of Charter Hire, that is during		In order to avoid disputes regarding liability for personal injury or death of	394
the first 24 months.		employees or for loss of or damage to property, the Owners and the	395
<b>12. Liabilities and Indemnities</b>	323	Charterers have entered into, or by this Charter Party agree to enter into, an	396
(a) <b>Owners.</b> - Notwithstanding anything else contained in this Charter Party	324	Agreement for Mutual Indemnity and Waiver of Recourse (in a form	397
excepting <b>Clause 15(c)(ii), 16(a), 16(b), 12(a), 15(c) and 21</b> , the Charterers shall	325	substantially similar to that specified in <b>ANNEX 12</b> ) between the Owners, the	398
not be responsible for loss of or damage to the property of the Owners or of	326	Charterers and the various contractors and sub-contractors of the Charterers.	399
their contractors and sub-contractors, including the Vessel, or for personal	327	(c) <b>Hazardous and Noxious Substances.</b> - Notwithstanding any other	400
injury or death of the employees of the Owners or of their contractors and	328	provision of this Charter Party to the contrary, the Charterers shall always be	401
sub-contractors, arising out of or in any way connected with the performance	329	responsible for any losses, damages or liabilities suffered by the Owners,	402
of this Charter Party, even if such loss, damage, injury or death is caused	330	their employees, contractors or sub-contractors, by the Charterers, or by	403
wholly or partially by the act, neglect, or default of the Charterers, their	331	third parties, with respect to the Vessel or other property, personal injury or	404
employees, contractors or sub-contractors, and even if such loss, damage,	332	death, pollution or otherwise, which losses, damages or liabilities are caused,	405
injury or death is caused wholly or partially by unseaworthiness of any vessel,	333	directly or indirectly, as a result of the Vessel's carriage of any hazardous and	406
and the Owners and their contractors and sub-contractors shall indemnify,	334	noxious substances in whatever form as ordered by the Charterers, and the	407
protect, defend and hold harmless the		Charterers shall defend, indemnify the Owners and hold the Owners harmless	408
Charterers from any (and against all) claims, costs, expenses, actions,	335	for any expense, loss or liability whatsoever or howsoever arising with	409
proceedings, suits, demands and liabilities whatsoever arising out of or in	336	respect to the carriage of hazardous or noxious substances.	410
connection with such loss, damage, personal injury or death.	337		
(b) <b>Charterers.</b> - Notwithstanding anything else contained in this Charter	338	<b>13. Pollution</b>	411
Party excepting <b>Clause 21</b> , the Owners shall not be responsible for loss of,	339	(a) Except as otherwise provided for in <b>Clause 15(c)(ii)</b> , the Owners shall be	412
damage to, or any liability arising out of anything loaded by the Vessel, any	340	liable for, and agree to indemnify, defend and hold harmless the Charterers	413
cargo laden upon or carried by the Vessel or her tow, the property of the	341	against, all claims, costs, expenses, actions, proceedings, suits, demands	414
Charterers or of their contractors and sub-contractors, including their	342	and liabilities whatsoever arising out of actual or potential pollution damage	415
offshore units, or for personal injury or death of the employees of the	343	and the cost of cleanup or control thereof arising from acts or omissions of	416
Charterers or of their contractors and sub-contractors (other than the Owners	344	the Owners or their personnel which causes or allow discharge, spills or leaks	417
and their contractors and sub-contractors) or of anyone on board anything	345	from the Vessel, except as may emanate from cargo thrown or thrown.	418
loaded by the Vessel, arising out of or in any way connected with the	346	(b) The Charterers shall be liable for and agree to indemnify, defend and hold	419
performance of this Charter Party, even if such loss, damage, liability, injury	347	harmless the Owners from all claims, costs, expenses, actions, proceedings,	420
or death is caused wholly or partially by the act, neglect or default of the	348	suits, demands, liabilities, loss or damage whatsoever arising out of or	421
Owners, their employees, contractors or sub-contractors, and even if such	349	resulting from any other actual or potential pollution damage, even where	422
loss, damage, liability, injury or death is caused wholly or partially by the	350	caused wholly or partially by the act, neglect or default of the Owners, their	423
unseaworthiness of any vessel, and the Charterers and their contractors and	351	employees, contractors or sub-contractors or by the unseaworthiness of the	424
sub-contractors shall indemnify, protect,		Vessel.	425
defend and hold harmless the Owners from any and against all claims, costs,	352		
expense, actions, proceedings, suits, demands, and liabilities whatsoever	353		

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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

14. Insurance	426	The Owners shall have a lien upon all cargoes for all claims against the	498
(a) The Owners shall procure and maintain in effect for the duration of this	427	Charterers under this Charter Party and the Charterers shall have a lien on the	499
Charter Party, with reputable insurers, the insurances set forth in ANNEX B.	428	Vessel for all monies paid in advance and not earned. The Charterers will not	500
Policy limits shall not be less than those indicated. Reasonable deductibles	429	suffer, nor permit to be continued, any lien or encumbrance incurred by them	501
are acceptable and shall be for the account of the Owners.	430	or their agents, which might have priority over the title and interest of the	502
(b) The Charterers shall upon request be named as co-insured. The Owners	431	Owners in the Vessel. Except as provided in Clause 12, the Charterers shall	503
shall upon request cause insurers to waive subrogation rights against the	432	indemnify and hold the Owners harmless against any lien of whatsoever	504
Charterers (as encompassed in Clause 12(a)(10)). Co-insurance and/or	433	nature arising upon the Vessel during the Charter Period while she is under	505
waivers of subrogation shall be given only insofar as these relate to liabilities	434	the control of the Charterers; and against any claims against the Owners	506
which are properly the responsibility of the Owners under the terms of this	435	arising out of the operation of the Vessel by the Charterers or out of any	507
Charter Party.	436	neglect of the Charterers in relation to the Vessel or the operation thereof.	508
(c) The Owners shall upon request furnish the Charterers with certificates of	437	Should the Vessel be arrested by reason of claims or liens arising out of her	509
insurance which provide sufficient information to verify that the Owners have	438	operation hereunder, unless brought about by the act or neglect of the	510
complied with the insurance requirements of this Charter Party.	439	Owners, the Charterers shall at their own expense take all reasonable steps to	511
(d) If the Owners fail to comply with the aforesaid insurance requirements, the	440	secure that within a reasonable time the Vessel is released and at their own	512
Charterers may, without prejudice to any other rights or remedies under this	441	expense put up bail to secure release of the Vessel.	513
Charter Party, purchase similar coverage and deduct the cost thereof from	442		
any payment due to the Owners under this Charter Party.	443		
15. Saving of Life and Salvage	444	17. Sublet and Assignment	514
(a) The Vessel shall be permitted to deviate for the purpose of saving life at	445	(a) Charterers - The Charterers shall have the option of subletting, assigning	515
sea without prior approval of or notice to the Charterers and without loss of	446	or leasing the Vessel to any person or company not competing with the	516
Hire provided however that notice of such deviation is given as soon as	447	Owners, subject to the Owners' prior approval which shall not be	517
possible.	448	unreasonably withheld, upon giving notice in writing to the Owners, but the	518
(b) Subject to the Charterers' consent, which shall not be unreasonably	449	original Charterers shall always remain responsible to the Owners for due	519
withheld, the Vessel shall be at liberty to undertake attempts at salvage, it	450	performance of the Charter Party and contractors of the person or company	520
being understood that the Vessel shall be off hire from the time she leaves	451	taking such subletting, assigning or loan shall be deemed contractors of the	521
port or commences to deviate and she shall remain off-hire until she is again	452	Charterers for all the purposes of this Charter Party. The Owners make it a	522
in every way ready to resume the Charterers' service at a position which is not	453	condition of such consent that additional Hire shall be paid as agreed	523
less favourable to the Charterers than the position at the time of leaving port	454	between the Charterers and the Owners having regard to the nature and	524
or deviating for the salvage services.	455	period of any intended service of the Vessel.	525
All salvage monies earned by the Vessel shall be divided equally between the	456	(b) If the Vessel is sublet, assigned or loaned to undertake its anchor	526
Owners and the Charterers, after deducting the Master's, Officers' and Crew's	457	handling and/or towing operations connected with equipment other than that	527
share, legal expenses, value of fuel and lubricants consumed, Hire of the	458	used by the Charterers, then a daily increment to the Hire in the amount as	528
Vessel lost by the Owners during the salvage, repairs to damage sustained, if	459	stated in Clause 22 or pro-rata shall be paid for the period between departure for	529
any, and any other extraordinary loss or expense sustained as a result of the	460	such operations and return to her normal duties for the Charterers.	530
salvage.	461	(c) Owners - The Owners may not assign or transfer any part of this Charter	531
The Charterers shall be bound by all measures taken by the Owners in order	462	Party without the written approval of the Charterers, which approval shall not	532
to secure payment of salvage and to fix its amount.	463	be unreasonably withheld.	533
(d) The Owners shall waive their right to claim any award for salvage	464	Approval by the Charterers of such subletting or assignment shall not relieve	534
performed on property owned by or contracted to the Charterers, always	465	the Owners of their responsibility for due performance of the part of the	535
provided such property was the object of the operation the Vessel was	466	services which is sublet or assigned.	536
chartered for, and the Vessel shall remain on hire when rendering salvage	467		
services to such property. This waiver is without prejudice to any right the	468	18. Substitute Vessel	537
Vessel's Master, Officers and Crew may have under any flag.	469	The Owners shall be entitled at any time, whether before delivery or at any	538
If the Owners render assistance to such property in distress on the basis of	470	other time during the Charter Period, to provide a substitute vessel, subject to	539
"no claim for salvage", then, notwithstanding any other provisions contained	471	the Charterers' prior approval which shall not be unreasonably withheld.	540
in this Charter Party and even in the event of neglect or default of the Owners,	472		
Master, Officers or Crew.	473	19. War	541
(f) The Charterers shall be responsible for and shall indemnify the Owners	474	(a) Unless the consent of the Owners be first obtained, the Vessel shall not be	542
against payments made, under any legal rights, to the Master, Officers	475	ordered nor continue to any port or place or on any voyage nor be used on	543
and Crew in relation to such assistance.	476	any service which will bring the Vessel within a zone which is dangerous as a	544
(g) The Charterers shall be responsible for and shall reimburse the Owners	477	result of any actual or threatened act of war, war, hostilities, warlike	545
for any loss or damage sustained by the Vessel or her equipment by	478	operations, acts of piracy or of hostility or malicious damage against the or	546
reason of giving such assistance and shall also pay the Owners' additional	479	any other vessel or its cargo by any person, body or estate whatsoever,	547
expenses thereby incurred.	480	revolution, civil war, civil commotion or the operation of international law, nor	548
(h) The Charterers shall be responsible for any actual or potential spill,	481	be exposed in any way to any risks or penalties whatsoever consequent upon	549
seepage and/or emission of any pollutant however caused occurring	482	the imposition of sanctions, nor carry any goods that may in any way expose	550
within the offshore site and any pollution resulting therefrom	483	her to any risks of seizure, capture, penalties or any other interference of any	551
whenever it may occur and including but not limited to the cost of	484	kind whatsoever by the belligerent or fighting powers or parties or by any	552
such measures as are reasonably necessary to prevent or mitigate	485	government or rulers.	553
pollution damage, and the Charterers shall indemnify the Owners	486	(b) Should the Vessel approach or be brought or ordered within such zone, or	554
against any liability, cost or expense arising by reason of such actual or	487	be exposed in any way to the said risks, (i) the Owners shall be entitled from	555
potential spill, seepage and/or emission.	488	time to time to insure their interest in the Vessel for such terms as they deem	556
(i) The Vessel shall not be off-hire as a consequence of giving such	489	fit up to its open market value and also in the Hire against any of the risks	557
assistance, or effecting repairs under sub-paragraph (f) of this sub-	490	likely to be involved thereby, and the Charterers shall make a refund on	558
clause, and time taken for such repairs shall not count against time	491	demand of any additional premium thereby incurred, and (ii) notwithstanding	559
granted under Clause 11(c).	492	the terms of Clause 11 Hire shall be payable for all time lost including any loss	560
(j) The Charterers shall indemnify the Owners against any liability, cost	493	owing to loss of or injury to the Master, Officers, Crew or passengers or to	561
and/or expense whatsoever in respect of any loss of life, injury, damage	494	refusal by any of them to proceed to such zone or to be exposed to such risks.	562
or other loss to person or property however arising from such	495	(c) In the event of additional insurance premiums being incurred or the wages	563
assistance.	496	of the Master and/or Officers and/or Crew and/or the cost of provisions and/or	564
	497	stores for deck and/or engine room being increased by reason of or during	565
		the existence of any of the matters mentioned in sub-clause (b) the amount of	566
		any additional premium and/or increase shall be added to the Hire, and paid	567
		by the Charterers on production of the Owners' account therefor, such	568

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PART II  
"SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

account being rendered monthly.	569	management of the Vessel, the Charterers will indemnify the Owners against	640
(d) The Vessel shall have liberty to comply with any orders or directions as to	570	all loss or liability to the other or non-carrying ship or her owners insofar as	641
departure, arrival, routes, ports of call, stoppages, destination, delivery or in	571	such loss or liability represents loss of or damage to, or any claim whatsoever	642
any other way whatsoever given by the government of the nation under whose	572	of the owners of any goods carried under this Charter Party paid or payable by	643
flag the Vessel sails or any other government or any person (or body) acting	573	the other or non-carrying ship or her owners to the owners of the said goods	644
or purporting to act with the authority of such government or by any	574	and not, recouped or recovered by the other or non-carrying ship or her	645
committee or person having authority under the terms of the war risks insurance on the	575	owners or part of their claim against the Vessel or the Owners. The foregoing	646
Vessel the right to give any such orders or directions.	576	provisions shall also apply where the owners, operators or those in charge of	647
(e) In the event of the outbreak of war (whether there be a declaration of war or	577	any ship or ships or objects other than or in addition to the colliding ships or	648
not between any of the countries stated in Box 30 or in the event of the nation	578	objects are at fault in respect of a collision or contact.	649
under whose flag the Vessel sails becoming involved in war (whether there be	579		
a declaration of war or not) either the Owners or the Charterers may terminate	580		
this Charter Party, whereupon the Charterers shall redeliver the Vessel to the	581		
Owners in accordance with <u>PART II</u> if it has cargo on board after discharge	582		
thereof at destination or, if debared under this Clause from reaching or	583		
entering it, at a near open and safe port or place as directed by the Owners, or	584		
if the Vessel has no cargo on board, at the port or place at which it then is or if	585		
at sea at a near open and safe port or place as directed by the Owners. In all	586		
cases this shall continue to be valid and, except as aforesaid, all other	587		
provisions of this Charter Party shall apply until redelivery.	588		
(f) If in compliance with the provisions of this Clause anything is done or is not	589		
done, such shall not be deemed a deviation.	590		
The Charterers shall procure that all Bills of Lading (if any) issued under this	591		
Charter Party shall contain the stipulations contained in sub-clauses (a), (d)	592		
and (f) of this Clause.	593		
20. Excluded Ports	594	23. Structural Alterations and Additional Equipment	650
(a) The Vessel shall not be ordered to nor bound to enter without the Owners'	595	The Charterers shall have the option of, at their expense, making structural	651
written permission (a) any place where fever or epidemics are prevalent or to	596	alterations to the Vessel or installing additional equipment with the written	652
which the Master, Officers and Crew by law are not bound to follow the Vessel;	597	consent of the Owners which shall not be unreasonably withheld but unless	653
(b) any ice-bound place or any place where lights, lightships, marks and	598	otherwise agreed the Vessel is to be redelivered reinstated, at the Charterers'	654
buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival	599	expense, to her original condition. The Vessel is to remain on hire during any	655
or where there is risk that ordinarily the Vessel will not be able on account of	600	period of these alterations or reinstatement. The Charterers, unless otherwise	656
ice to reach the place or to get out after having completed her operations. The	601	agreed, shall be responsible for repair and maintenance of any such	657
Vessel shall not be obliged to force ice nor to follow an icebreaker. If, on	602	alteration or additional equipment.	658
account of ice, the Master considers it dangerous to remain at the backing or	603		
discharging place for fear of the Vessel being frozen in and/or damaged he	604		
has liberty to sail to a convenient open place and await the Charterers' fresh	605		
instructions.	606		
(b) Should the Vessel approach or be brought or ordered within such place,	607		
or be exposed in any way to the said risks, the Owners shall be entitled from	608		
time to time to insure their interests in the Vessel and/or Hire against any of	609		
the risks likely to be involved thereby on such terms as they shall think fit, the	610		
Charterers to make a refund to the Owners of the premium on demand.	611		
Notwithstanding the terms of <u>Clause 11</u> Hire shall be paid for all time lost	612		
including any lost owing to loss of or sickness or injury to the Master, Officers,	613		
Crew or passengers or to the actions of the Crew in refusing to proceed to such	614		
place or to be exposed to such risks.	615		
21. General Average and New Jason Clause	616	24. Health and Safety	659
General Average shall be adjusted and settled in London unless otherwise	617	The Owners shall comply with and adhere to all applicable international,	660
stated in Box 31, according to York/Antwerp Rules, 1974, as may be amended.	618	national and local regulations pertaining to health and safety, and such	661
Hire shall not contribute to General Average. Should adjustment be made in	619	Charterers' instructions as may be appended hereto.	662
accordance with the law and practice of the United States of America, the	620		
following provision shall apply:	621		
"In the event of accident, danger, damage or disaster before or after the	622		
commencement of the voyage, resulting from any cause whatsoever, whether	623		
due to negligence or not, for which, or for the consequence of which, the	624		
Owners are not responsible, by statute, contract or otherwise, the cargo,	625		
shippers, consignees or owners of the cargo shall contribute with the Owners	626		
in General Average to the payment of any sacrifices, loss or expenses of a	627		
General Average nature that may be made or incurred and shall pay salvage	628		
and special charges incurred in respect of the cargo.	629		
If a sailing vessel is owned or operated by the Owners, salvage shall be paid	630		
for as fully as if the said sailing vessel or vessels belonged to strangers. Such	631		
deposit as the Owners, or their agents, may deem sufficient to cover the	632		
estimated contribution of the cargo and any salvage and special charges	633		
thereon shall, if required, be made by the cargo, shippers, consignees	634		
or owners of the cargo to the Owners before delivery."	635		
22. Both-to-Blame Collision Clause	636	25. Taxes	663
If the Vessel comes into collision with another ship as a result of the	637	Each party shall pay taxes due on its own profit, income and personnel. The	664
negligence of the other ship and any act, neglect or default of the Master,	638	Charterers shall pay all other taxes and dues arising out of the operation or	665
mariner, pilot or the servants of the Owners in the navigation or the	639	use of the Vessel during the Charter Period.	666
		In the event of change in the Area of Operation or change in local regulation	667
		and/or interpretation thereof, resulting in an unavoidable and documented	668
		change of the Owners' tax liability after the date of entering into the Charter	669
		Party or the date of commencement of employment, whichever is the earlier,	670
		Hire shall be adjusted accordingly.	671
		26. Early Termination	672
		(a) For Charterers' Convenience. - The Charterers may terminate this Charter	673
		Party at any time by giving the Owners written notice as stated in Box 35 and	674
		by paying the settlement stated in Box 34 and the demobilization charge	675
		stated in Box 36, as well as Hire or other payments due under the Charter	676
		Party.	677
		(b) For Owners. - If either party becomes informed of the occurrence of any	678
		event described in this Clause that party shall so notify the other party	679
		promptly in writing and in any case within 3 days after such information is	680
		received. If the occurrence has not ceased within 3 days after such	681
		notification has been given, this Charter Party may be terminated by either	682
		party, without prejudice to any other rights which either party may have, under	683
		any of the following circumstances:	684
		(i) <u>Requisition</u> . - If the government of the state of registry and/or the flag of	685
		the Vessel, or any agency thereof, requisitions for hire or title or	686
		otherwise takes possession of the Vessel during the Charter Period.	687
		(ii) <u>Confiscation</u> . - If any government, individual or group, whether or not	688
		purporting to act as a government or on behalf of any government,	689
		collective, requisitions, appropriates, seizes or otherwise takes	690
		possession of the Vessel during the Charter Period.	691
		(iii) <u>Bankruptcy</u> . - In the event of an order being made or resolution passed	692
		for the winding up, dissolution, liquidation or bankruptcy of either party	693
		(otherwise than for the purpose of reconstruction or amalgamation) or if	694
		a receiver is appointed or if it suspends payment or ceases to carry on	695
		business.	696
		(iv) <u>Loss of Vessel</u> . - If the Vessel is lost, actually or constructively, or	697
		missing, unless the Owners provide a substitute vessel pursuant to	698
		Clause 18. In the case of termination, Hire shall cease from the date the	699
		Vessel was lost or, in the event of a constructive total loss, from the date	700
		of the event giving rise to such loss. If the date of loss cannot be	701
		ascertained or the Vessel is missing, payment of Hire shall cease from	702
		the date the Vessel was last reported.	703
		(v) <u>Breakdown</u> . - If, at any time during the term of this Charter Party, a	704
		breakdown of the Owners' equipment or Vessel results in the Owners'	705
		being unable to perform their obligations hereunder for a period	706
		exceeding that stated in Box 32, unless the Owners provide a substitute	707
		vessel pursuant to Clause 18.	708
		(vi) <u>Force Majeure</u> . - If a force majeure condition as defined in Clause 27	709

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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

prevails for a period exceeding 15 consecutive days.	710	within 14 days, failing which the arbitrator already appointed shall act as sole	751
(vi) <u>Default</u> . - If either party is in repudiatory breach of its obligations	711	arbitrator. If two arbitrators properly appointed shall not agree they shall	752
hereunder.	712	appoint an umpire whose decision shall be final.	753
Termination as a result of any of the above mentioned causes shall not relieve	713	7- (b) Should any dispute arise out of this Charter Party, the matter in dispute	754
the Charterers of any obligation for hire and any other payments due.	714	shall be referred to three persons at New York, one to be appointed by each of	755
		the parties hereto, and the third by the two so chosen; their decision or that of	756
27. <u>Force Majeure</u>	715	any two of them shall be final, and for purpose of enforcing any award, this	757
Neither the Owners nor the Charterers shall be liable for any loss, damages or	716	agreement may be made a rule of the Court. The arbitrators shall be members	758
delay or failure in performance hereunder resulting from any force majeure	717	of the Society of Maritime Arbitrators, Inc. of New York and the proceedings	759
event, including but not limited to acts of God, fire, action of the elements,	718	shall be conducted in accordance with the rules of the Society.	760
epidemics, war (declared or undeclared), warlike actions, insurrection,	719	7- (c) Any dispute arising out of this Charter Party shall be referred to arbitration	761
revolution or civil strife, piracy, civil war or hostile action, strikes or	720	at the place stated in <u>Box 22</u> subject to the law and procedure applicable	762
differences with workmen (except for disputes relating solely to the Owners'	721	there.	763
or the Charterers' employees), acts of the public enemy, federal or state laws,	722	(d) If <u>Box 22</u> in PART I is not filled in, sub-clause (c) of this Clause shall apply;	764
rules and regulations of any governmental authorities having or asserting	723	(e), (f) and (g) are alternative; this alternative agreed to <u>Box 22</u> .	765
jurisdiction in the premises or of any other group, organization or informal	724		
association (whether or not formally recognized as a government), and any	725	32. <u>Entire Agreement</u>	766
other cause beyond the reasonable control of either party which makes	726	This is the entire agreement of the parties, which supersedes all previous	767
continuance of operations impossible.	727	written or oral understandings and which may not be modified except by a	768
		written amendment signed by both parties.	769
28. <u>Notices and Invoices</u>	728		
Notices and invoices required to be given under this Charter Party shall be	729	33. <u>Severability Clause</u>	770
given in writing to the addressee stated in <u>Boxes 21, 25 and 26</u> as appropriate.	730	If any portion of this Charter Party is held to be invalid or unenforceable for	771
		any reason by a court or governmental authority of competent jurisdiction,	772
29. <u>Wreck Removal</u>	731	then such portion will be deemed to be stricken and the remainder of this	773
If the Vessel sinks and becomes a wreck and an obstruction to navigation and	732	Charter Party shall continue in full force and effect.	774
has to be removed upon request by any compulsory law or authority having	733		
jurisdiction over the area where the wreck is placed, the Owners shall be	734	34. <u>Demise</u>	775
liable for any and all expenses in connection with the raising, removal,	735	Nothing herein contained shall be construed as creating a demise of	776
destruction, lighting or marking of the wreck.	736	the Vessel to the Charterers.	777
30. <u>Confidentiality</u>	737	35. <u>Definitions</u>	778
All information or data obtained by the Owners in the performance of this	738	"Well" is defined for the purposes of this Charter Party as the time required to	779
Charter Party is the property of the Charterers, is confidential and shall not be	739	drill, test, complete and/or abandon a single borehole including any side-	780
disclosed without the prior written consent of the Charterers. The Owners	740	track borehole.	781
shall use their best efforts to ensure that the Owners, any of their	741	"Offshore unit" is defined for the purposes of this Charter Party as any vessel,	782
sub-contractors, and employees and agents thereof shall not disclose any	742	offshore installation, structure and/or mobile unit used in offshore	783
such information or data.	743	exploration, construction, pipe-laying or repair, exploitation or production.	784
		"Offshore site" is defined for the purposes of this Charter Party as the area	785
31. <u>Law and Arbitration</u>	744	within three nautical miles of an "offshore unit" from or to which the Owners	786
7- (a) This Charter Party shall be governed by English-Norwegian law and any	745	are requested to take their Vessel by the Charterers.	787
dispute		"Employee" is defined for the purposes of this Charter Party as employees,	788
arising out of this Charter Party shall be referred to arbitration in London, Oslo,	746	directors, officers, servants, agents or invitees.	789
or			
arbitrator being appointed by each party, in accordance with the Norwegian	747	36. <u>Headings</u>	790
Arbitration		The headings of this Charter Party are for identification only and shall not be	791
Acts 1960 and 1979 or any statutory modification or re-enactment thereof for	748	deemed to be part hereof or be taken into consideration in the interpretation	792
the time being in force. On the receipt by one party of the nomination in	749	or construction of this Charter Party.	793
writing of the other party's arbitrator, that party shall appoint their arbitrator	750		

## **EXHIBIT 2**



**SIDE-AGREEMENT TO TIME CHARTER PARTY BETWEEN TFDS OFFSHORE  
AS AND ROLV BERG DRIVE AS REGARDING AHTS ALDOMA**

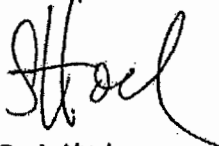
It is understood between the parties that ONGC may offer Rolv Berg Drive AS extensions to the 3 year contract with contract no: MR/MM/OFF.LGTS./CH/VESSELS//10(109)/2003. It is further agreed between the parties that should Rolv Berg Drive AS be granted extension to this contract or new contracts with ONGC, Rolv Berg Drive shall have the right to extend the charter of AHTS Aldoma on a day-rate not to exceed USD 9.000,-.

This agreement shall be subject only to TFDS Offshore securing further charter with the vessel's owner.

It is further agreed that should Rolv Berg Drive AS secure other future contracts with ONGC TFDS Offshore AS will be given first option where they have vessels which meet the requirements at competitive rates.

This agreement is entered into on the 5<sup>th</sup> of March 2004.

For TFDS Offshore AS



Svein Hoel  
Managing Director

For Rolv Berg Drive AS



Snorre S. Stinessen  
Coordinating Manager

## **EXHIBIT 3**




Issued by The Documentary Committee of  
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September 1999

1. Place and date 12 May 2005		UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS CODE NAME: "SUPPLYTIME 89"		 PART I	
2. Owners/Place of business (full style, address and tele/fax/no.) (Cl. 1(a)) FSUE Arktikmornepregazrazvedka		3. Charterers/Place of business (full style, address and tele/fax/no.) (Cl. 1(a)) North Offshore AS (former TFDS Offshore AS and Troms Offshore Invest AS), Enterprise no. 929 987 020 Strandveien 108 9008 Tromsø, Norway			
4. Vessel's name (Cl. 1(a)) Aldoma		5. Date of delivery (Cl. 2(a)) 6 March 2006	6. Cancelling date (Cl. 2(a) and (c)) N/A		
7. Port or place of delivery (Cl. 2(a)) India, Kakinada		8. Port or place redelivery/notice of redelivery (Cl. 2(d))  Kirkenes to be agreed (i) Port or place of redelivery  30 days (ii) Number of days' notice of redelivery			
9. Period of hire (Cl. 1(a)) 14 months		10. Extension of period of hire (optional) (Cl. 1(b))  2 x 1 year (i) Period of extension  90 days (ii) Advance notice for declaration of option (days)			
11. Automatic extension period to complete voyage or well (Cl. 1(c))  N/A (i) Voyage or well (state which)  N/A (ii) Maximum extension period (state number of days)		12. Mobilisation charge (lump sum and when due) (Cl. 2(b)(i))  N/A (i) Lump sum  N/A (ii) When due			
14. Early termination of charter (state amount of hire payable) (Cl. 28(a)) USD 81,000		15. Number of days' notice of early termination (Cl. 28(a)) N/A		16. Demobilisation charge (lump sum) (Cl. 2(a) and Cl. 28(a)) <del>USD 81,000</del> N/A <i>SH</i> <i>SH</i>	
17. Area of operation (Cl. 5(a)) World Wide within MWL, intention domestic India trade for ONGC		18. Employment of vessel restricted to (state nature of service(s)) (Cl. 5(a)) N/A			

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"SUPPLYTIME 89" UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS

PART I

19. Charter hire (state rate and currency) (Cl. 10(a) and (d)) USD 3,500.-		20. Extension hire (if agreed, state rate) (Cl. 10(b)) 1 <sup>st</sup> option USD 3,500.- per day 2 <sup>nd</sup> option USD 3,500.- per day	
21. Invoicing for hire and other payments (Cl. 10(d)) (i) state whether to be issued in advance or arrears Arrears (within 5 days after invoice)  (ii) state to whom to be issued if addressee other than stated in Box 2 As per box 2  (iii) state to whom to be issued if addressee other than stated in Box 3 As per box 3		22. Payments (state mode and place of payment; also state beneficiary and bank account) (Cl. 10(e)) As per invoice.	
23. Payment of hire, bunker invoices and disbursements for Charterers' account (state maximum number of days) (Cl. 10(b)) 15 days		24. Interest rate payable (Cl. 10(f)) LIBOR + 3 %	25. Maximum audit period (Cl. 10(f))
26. Meals (state rate agreed) (Cl. 6(a)(i)) N/A	27. Accommodation (state rate agreed) (Cl. 6(a)(ii)) N/A	28. Minimum Notice of Recharter (optional, state whether applicable) (Cl. 12(f)) N/A	
29. Sublet (state amount of daily increment to charter hire) (Cl. 17(b)) See additional clauses 38 - Profit split		30. War (state name of countries) (Cl. 19(a)) Russia, Norway, India	
31. General average (place of settlement - only to be filled in if other than London) (Cl. 21) Oslo		32. Breakdown (state period) (Cl. 25(a)(ii)) N/A	
33. Law and arbitration (state Cl. 31(a) or 31(b) or 31(c) as agreed; if Cl. 31(c) agreed also state place of arbitration) (Cl. 31) Norwegian law, arbitration in Oslo, Norway		34. Numbers of additional clauses covering special provisions, if agreed	
35. Names and addresses for notices and other communications required to be given by the Charterer (Cl. 32) FSUE Artiklmomeftegsrazvedika		36. Names and addresses for notices and other communications required to be given by the Charterer (Cl. 32) Norwegian law, arbitration in Oslo, Norway	

It is mutually agreed that this Contract shall be performed subject to the conditions contained in the "SUPPLYTIME 89" UNIFORM TIME CHARTER PARTY for Offshore Service Vessels, including additional clauses if any agreed and stated in Box 34, and PART II as well as ANNEX "A" and ANNEX "B" as agreed, and the Charterer shall be bound by the provisions of the Charter Party and shall only apply if the Charter Party is amended in Box 34.



\_\_\_\_\_  
 Charterer

PRINTED BY SUPPLYTIME 89 FROM THE SUPPLYTIME 89 UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS. IN THE EVENT OF ANY MODIFICATION TO THE SUPPLYTIME 89 FROM THE SUPPLYTIME 89 UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS, THE SUPPLYTIME 89 FROM THE SUPPLYTIME 89 UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS SHALL BE APPLIED TO THE SUPPLYTIME 89 FROM THE SUPPLYTIME 89 UNIFORM TIME CHARTER PARTY FOR OFFSHORE SERVICE VESSELS.

**PART II**  
**"SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels**

accessible to the Charterers or their agents.	129	ropes, slings and special runners (including bulk cargo discharge hoses)	196
(l) The Master shall sign cargo documents as and in the form presented, the same, however, not to be Bills of Lading, but receipts which shall be non-negotiable documents and shall be marked as such. The Charterers shall indemnify the Owners against all consequences and liabilities arising from the Master, Officers or agents signing, under the direction of the Charterers, those cargo documents or other documents inconsistent with this Charter Party or from any irregularity in the papers supplied by the Charterers or their agents.	130 131 132 133 134 135 136 137	actually used for loading and discharging, inert gas required for the protection of cargo, and electrodes used for offshore works, and shall reimburse the Owners for the actual cost of replacement of special mooring lines to offshore units, wires, nylon spring lines etc. used for offshore works, all hose connections and adaptors, and further, shall refill oxygen/acetylene bottles used for offshore works.	197 198 199 200 201 202
(m) The Vessel's Crew if required by Charterers will connect and disconnect electric cables, fuel, water and pneumatic hoses when placed on board the Vessel in port as well as alongside the offshore units; will operate the machinery on board the Vessel for loading and unloading cargoes; and will hook and unhook cargo on board the Vessel when loading or discharging alongside offshore units. If the port regulations or the seamen and/or labour unions do not permit the Crew of the Vessel to carry out any of this work, then the Charterers shall make, at their own expense, whatever other arrangements may be necessary, always under the direction of the Master.	138 139 140 141 142 143 144 145 146 147	(c) The Charterers shall pay for customs duties, all permits, import duties (including costs involved in establishing temporary or permanent importation bonds), and clearance expenses, both for the Vessel and/or equipment, required for or arising out of this Charter Party.	203 204 205 206
(n) If the Charterers have reason to be dissatisfied with the conduct of the Master or any Officer or member of the Crew, the Owners on receiving particulars of the complaint shall promptly investigate the matter and if the complaint proves to be well founded, the Owners shall as soon as reasonably possible make appropriate changes in the appointment.	148 149 150 151	9. Bunkers	207
(o) The entire operation, navigation, and management of the Vessel shall be in the exclusive control and command of the Owners, their Master, Officers and Crew. The Vessel will be operated and the services hereunder will be rendered as requested by the Charterers, subject always to the exclusive right of the Owners or the Master of the Vessel to determine whether operation of the Vessel may be safely undertaken. In the performance of the Charter Party, the Owners are deemed to be an independent contractor, the Charterers being concerned only with the results of the services performed.	152 153 154 155 156 157 158 159	Unless otherwise agreed, The Vessel shall be delivered with bunkers and lubricants as on board and redelivered with sufficient bunkers to reach the next bunkering stage en route to her next port of call. The Charterers upon delivery and redelivery shall take over and pay for the bunkers and lubricants on board at the prices prevailing at the times and ports of delivery and redelivery.	208 209 210 211 212 213
7. Owners-Charterers to Provide	160	10. Hire and Payments	214
(a) The Owners-Charterers shall provide and pay for all provisions, wages and all other expenses of the Master, Officers and Crew; all maintenance and repair of the Vessel's hull, machinery and equipment as specified in ANNEX "A"; also, except as otherwise provided in this Charter Party, for all insurance on the Vessel, all dues and charges directly related to the Vessel's flag and/or registration, all deck, cabin and engine room stores, cordage required for ordinary ship's purposes mooring alongside in harbour, and all fumigation expenses and de-ratification certificates. The Owners-Charterers' obligations under this Clause extend to cover all liabilities for consular charges appertaining to the Master, Officers and Crew, customs or import duties arising at any time during the performance of this Charter Party in relation to the personal effects of the Master, Officers and Crew, and in relation to the stores, provisions and other matters as aforesaid which the Owners-Charterers are to provide and/or pay for, and the Owners shall refund to the Charterers any sums they or their agents may have paid or been compelled to pay in respect of such liability.	161 162 163 164 165 166 167 168 169 170 171 172 173	(a) Hire. - The Charterers shall pay Hire for the Vessel at the rate stated in Box 19 per day or pro rata for part thereof from the time that the Vessel is delivered to the Charterers until the expiration or earlier termination of this Charter Party.	215 216 217 218
(b) On delivery the Vessel shall be equipped, if appropriate, and the Charterers have accepted the vessel at the Owners' expense with any towing and anchor handling equipment specified in Section 6(b) of ANNEX "A" on board. If during the Charter Period any such equipment becomes lost, damaged or unserviceable, other than as a result of the Owners' negligence, the Charterers shall either provide, or direct the Owners to provide, an equivalent replacement at the Charterers' expense.	174 175 176 177 178 179 180 181	(b) Extension Hire. - If the option to extend the Charter Period under Clause 1(b) is exercised, Hire for such extension shall, unless stated in Box 20, be mutually agreed between the Owners and the Charterers.	219 220 221
8. Charterers also to Provide	182	(c) Adjustment of Hire. - The rate of hire shall be adjusted to reflect documented changes, after the date of entering into the Charter Party or the date of commencement of employment, whichever is earlier, in the Owners' costs arising from changes in the Charterers' requirements or regulations governing the Vessel and/or its Crew or this Charter Party.	222 223 224 225 226
(a) While the Vessel is on hire the Charterers shall provide and pay for all fuel, lubricants, water, dispersants, firefighting foam and transport thereof, port charges, pilotage and boatmen and canal steersmen (whether compulsory or not), launch hire (unless incurred in connection with the Owners' business), light dues, tug assistance, canal, dock, harbour, linnage and other dues and charges, agencies and commissions incurred on the Charterers' business, costs for security or other watchmen, and of quarantine (if occasioned by the nature of the cargo carried or the ports visited whilst employed under this Charter Party but not otherwise).	183 184 185 186 187 188 189 190 191	(d) Invoicing. - All invoices shall be issued in the contract currency stated in Box 19. In respect of reimbursable expenses incurred in currencies other than the contract currency, the rate of exchange into the contract currency shall be that quoted by the Central Bank of the country of such other currency as at the date of the Owners' invoice. Invoices covering Hire and any other payments due shall be issued monthly as stated in Box 21(i) or at the expiration or earlier termination of this Charter Party. Notwithstanding the foregoing, bunkers and lubricants on board at delivery shall be invoiced at the time of delivery.	227 228 229 230 231 232 233 234 235
(b) At all times the Charterers shall provide and pay for the loading and unloading of cargoes so far as not done by the Vessel's crew, cleaning of cargo tanks, all necessary dunnage, uprights and shoring equipment for securing deck cargo, all cordage except as to be provided by the Owners, all	192 193 194 195	(e) Payments. - Payments of Hire, bunker invoices and disbursements for the Charterers' account shall be received within the number of days stated in Box 23 from the date of receipt of the invoice. Payment shall be made in the contract currency in full without discount to the account stated in Box 22. However any advances for disbursements made on behalf of and approved by the Owners may be deducted from Hire due. If payment is not received by the Owners within 5 banking days following the due date the Owners are entitled to charge interest at the rate stated in Box 24 on the amount outstanding from and including the due date until payment is received. Where an invoice is disputed, the Charterers shall in any event pay the undisputed portion of the invoice but shall be entitled to withhold payment of the disputed portion provided that such portion is reasonably disputed and the Charterers specify such reason. Interest will be chargeable at the rate stated in Box 24 on such disputed amounts where resolved in favour of the Owners. Should the Owners prove the validity of the disputed portion of the invoice, balance payment shall be received by the Owners within 5 banking days after the dispute is resolved. Should the Charterers' claim be valid, a corrected invoice shall be issued by the Owners. In default of payment as herein specified, the Owners may require the Charterers to make payment of the amount due within 5 banking days of receipt of notification from the Owners; failing which the Owners shall have the right to withdraw the Vessel without prejudice to any claim the Owners may have against the Charterers under this Charter Party. While payment remains due the Owners shall be entitled to suspend the performance of any and all of their obligations hereunder and shall have no responsibility whatsoever for any consequences thereof, in respect of which the Charterers hereby indemnify the Owners, and Hire shall continue to accrue and any extra expenses resulting from such suspension shall be for the Charterers' account.	236 237 238 239 240 241 242 243 244 245 246 247 248 249 250 251 252 253 254 255 256 257 258 259 260 261 262 263 264 265
		(f) Audit. - The Charterers shall have the right to appoint an independent chartered accountant to audit the Owners' books directly related to work	266 267

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## PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

performed under this Charter Party at any time after the conclusion of the Charter Party, up to the expiry of the period stated in Box 25, to determine the validity of the Owners' charges hereunder. The Owners undertake to make their records available for such purposes at their principal place of business during normal working hours. Any discrepancies discovered in payments made shall be promptly resolved by invoice or credit as appropriate.	268 269 270 271 272 273	Party excepting Clause 21, the Owners shall not be responsible for loss of, damage to, or any liability arising out of anything towed by the Vessel, any cargo laden upon or carried by the Vessel or her tow, the property of the Charterers or of their contractors and sub-contractors, including their offshore units, or for personal injury or death of the employees of the Charterers or of their contractors and sub-contractors (other than the Owners and their contractors and sub-contractors) or of anyone on board anything towed by the Vessel, arising out of or in any way connected with the performance of this Charter Party, even if such loss, damage, liability, injury or death is caused wholly or partially by the act, neglect or default of the Owners, their employees, contractors or sub-contractors, and even if such loss, damage, liability, injury or death is caused wholly or partially by the unseaworthiness of any vessel; and the Charterers shall indemnify, protect, defend and hold harmless the Owners from any and against all claims, costs, expenses, actions, proceedings, suits, demands, and liabilities whatsoever arising out of or in connection with such loss, damage, liability, personal injury or death.	339 340 341 342 343 344 345 346 347 348 349 350 351 352 353 354 355
<b>11. Suspension of Hire</b>	274	(c) <b>Consequential Damages.</b> - Neither party shall be liable to the other for, and each party hereby agrees to protect, defend and indemnify the other against, any consequential damages whatsoever arising out of or in connection with the performance or non-performance of this Charter Party, including, but not limited to, loss of use, loss of profits, shut-in or loss of production and cost of insurance.	356 357 358 359 360 361
The hire is payable on a 365 days basis without off-hire. (a) If as a result of any deficiency of Crew or of the Owners' stores, strike of Master, Officers and Crew, breakdown of machinery, damage to hull or other accidents to the Vessel, the Vessel is prevented from working, no Hire shall be payable in respect of any time lost and any Hire paid in advance shall be adjusted accordingly provided always however that Hire shall not cease in the event of the Vessel being prevented from working as aforesaid as a result of:	275 276 277 278 279 280 281 282 283 284 285 286 287 288	(d) <b>Limitations.</b> - Nothing contained in this Charter Party shall be construed or held to deprive the Owners or the Charterers, as against any person or party, including as against each other, of any right to claim limitation of liability provided by any applicable law, statute or convention, save that nothing in this Charter Party shall create any right to limit liability. Where the Owners or the Charterers may seek an indemnity under the provisions of this Charter Party or against each other in respect of a claim brought by a third party, the Owners or the Charterers shall seek to limit their liability against such third party.	362 363 364 365 366 367 368 369 370
(i) the carriage of cargo as noted in Clause 5(c)(iii) and (iv);	281	(e) <b>Himalaya Clause.</b> - (i) All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Charter Party or by any applicable statute, rule or regulation for the benefit of the Charterers shall also apply to and be for the benefit of the Charterers' parent, affiliated, related and subsidiary companies; the Charterers' contractors, sub-contractors, clients, joint venturers and joint interest owners (always with respect to the job or project on which the Vessel is employed); their respective employees and their respective underwriters.	371 372 373 374 375 376 377 378 379
(ii) quarantine or risk of quarantine unless caused by the Master, Officers or Crew having communication with the shore at any infected area not in connection with the employment of the Vessel without the consent or the instructions of the Charterers;	282 283 284 285	(ii) All exceptions, exemptions, defences, immunities, limitations of liability, indemnities, privileges and conditions granted or provided by this Charter Party or by any applicable statute, rule or regulation for the benefit of the Owners shall also apply to and be for the benefit of the Owners' parent, affiliated, related and subsidiary companies, the Owners' sub-contractors, the Vessel, its Master, Officers and Crew, its registered owner, its operator, its demise charterer(s), their respective employees and their respective underwriters.	380 381 382 383 384 385 386
(iii) deviation from her Charter Party duties or exposure to abnormal risks at the request of the Charterers;	286 287		
(iv) detention in consequence of being driven into port or to anchorage through stress of weather or trading to shallow harbours or to river or ports with bars or suffering an accident to her cargo, when the expenses resulting from such detention shall be for the Charterers' account howsoever incurred;	288 289 290 291 292		
(v) detention or damage by loss;	293		
(vi) any act or omission of the Charterers, their servants or agents.	294		
(b) <b>Liability for Vessel not Working.</b> - The Owners' liability for any loss, damage or delay sustained by the Charterers as a result of the Vessel being prevented from working by any cause whatsoever shall be limited to suspension of hire.	295 296 297		
(c) <b>Maintenance and Drydocking.</b> - Notwithstanding sub-clause (a) hereof, the Charterers shall grant the Owners a maximum of 24 hours on hire, which shall be cumulative, per month or pro-rata for part of a month from the commencement of the Charter Period for maintenance and repairs including drydocking (hereinafter referred to as "maintenance allowance").	298 299 300 301 302 303		
The Vessel shall be drydocked at regular intervals. The Charterers shall place the Vessel at the Owners' disposal clean of cargo, at a port (to be nominated by the Owners at a later date) having facilities suitable to the Owners for the purpose of such drydocking.	304 305 306 307		
During reasonable voyage time taken in transit between such port and Area of Operation the Vessel shall be on hire and such time shall not be counted against the accumulated maintenance allowance.	308 309		
Hire shall be suspended during any time taken in maintenance repairs and drydocking in excess of the accumulated maintenance allowance.	310 311		
In the event of less time being taken by the Owners for repairs and drydocking or, alternatively, the Charterers not making the Vessel available for all or part of this time, the Charterers shall, upon expiration or earlier termination of the Charter Party, pay the equivalent of the daily rate of Hire then prevailing in addition to Hire otherwise due under this Charter Party in respect of all such time not so taken or made available.	312 313 314 315 316 317		
Upon commencement of the Charter Period, the Owners agree to furnish the Charterers with the Owners' proposed drydocking schedule and the Charterers agree to make every reasonable effort to assist the Owners in adhering to such predetermined drydocking schedule for the Vessel.	318 319 320 321 322		
<b>12. Liabilities and Indemnities</b>	323	(iii) The Owners or the Charterers shall be deemed to be acting as agent or trustee of and for the benefit of all such persons and parties set forth above, but only for the limited purpose of contracting for the extension of such benefits to such persons and parties.	387 388 389 390
(a) <b>Owners.</b> - Notwithstanding anything else contained in this Charter Party excepting Clauses 5(c)(iii), 7(b), 8(b), 12(a), 15(c) and 21, the Charterers shall not be responsible for loss of or damage to the property of the Owners or of their contractors and sub-contractors, including the Vessel, or for personal injury or death of the employees of the Owners or of their contractors and sub-contractors, arising out of or in any way connected with the performance of this Charter Party, even if such loss, damage, injury or death is caused wholly or partially by the act, neglect, or default of the Charterers, their employees, contractors or sub-contractors, and even if such loss, damage, injury or death is caused wholly or partially by unseaworthiness of any vessel; and the Owners shall indemnify, protect, defend and hold harmless the Charterers from any and against all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of or in connection with such loss, damage, personal injury or death.	324 325 326 327 328 329 330 331 332 333 334 335 336 337	(f) <b>Mutual Waiver of Recourse (Optional, only applicable if stated in Box 28, but regardless of whether this option is exercised the other provisions of Clause 12 shall apply and shall be paramount)</b>	391 392 393 394 395 396 397 398 399
(b) <b>Charterers.</b> - Notwithstanding anything else contained in this Charter	338	In order to avoid disputes regarding liability for personal injury or death of employees or for loss of or damage to property, the Owners and the Charterers have entered into, or by this Charter Party agree to enter into, an Agreement for Mutual Indemnity and Waiver of Recourse (in a form substantially similar to that specified in ANNEX "C") between the Owners, the Charterers and the various contractors and sub-contractors of the Charterers.	400 401 402 403 404 405 406 407 408

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# PART II

## "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

for any expense, loss or liability whatsoever or howsoever arising with respect to the carriage of hazardous or noxious substances.	409 410	If the Owners render assistance to such property in distress on the basis of "no claim for salvage", then, notwithstanding any other provisions contained in this Charter Party and even in the event of neglect or default of the Owners, Master, Officers or Crew:	470 471 472 473
13. Pollution	411	(i) The Charterers shall be responsible for and shall indemnify the Owners against payments made, under any legal rights, to the Master, Officers and Crew in relation to such assistance.	474 475 476
(a) Except as otherwise provided for in Clause 15(c)(iii), the Owners-Charterers shall be liable for, and agree to indemnify, defend and hold harmless the Charterers-Owners against, all claims, costs, expenses, actions, proceedings, suits, demands and liabilities whatsoever arising out of actual or potential pollution damage and the cost of cleanup or control thereof arising from acts or omissions of the Owners or their personnel which cause or allow discharge, spills or leaks from the Vessel, except as may emanate from cargo thereon or therein.	412 413 414 415 416 417 418	(ii) The Charterers shall be responsible for and shall reimburse the Owners for any loss or damage sustained by the Vessel or her equipment by reason of giving such assistance and shall also pay the Owners' additional expenses thereby incurred.	477 478 479 480
(b) The Charterers shall be liable for and agree to indemnify, defend and hold harmless the Owners from all claims, costs, expenses, actions, proceedings, suits, demands, liabilities, loss or damage whatsoever arising out of or resulting from any other actual or potential pollution damage, even where caused wholly or partially by the act, neglect or default of the Owners, their employees, contractors or sub-contractors or by the unseaworthiness of the Vessel.	419 420 421 422 423 424 425	(iii) The Charterers shall be responsible for any actual or potential spill, seepage and/or emission of any pollutant howsoever caused occurring within the offshore site and any pollution resulting therefrom wheresoever it may occur and including but not limited to the cost of such measures as are reasonably necessary to prevent or mitigate pollution damage, and the Charterers shall indemnify the Owners against any liability, cost or expense arising by reason of such actual or potential spill, seepage and/or emission.	481 482 483 484 485 486 487 488
14. Insurance	426	(iv) The Vessel shall not be off-hire as a consequence of giving such assistance, or effecting repairs under sub-paragraph (ii) of this sub-clause, and time taken for such repairs shall not count against time granted under Clause 11(c).	489 490 491 492
(a)(i) The Owners-Charterers shall procure and maintain in effect for the duration of this Charter Party, with reputable insurers, with total insurance value of USD 5 mill with the insurances set forth in ANNEX "B". Policy limits shall not be less than those indicated. Reasonable deductibles are acceptable and shall be for the account of the Owners-Charterers.	427 428 429 430	(v) The Charterers shall indemnify the Owners against any liability, cost and/or expense whatsoever in respect of any loss of life, injury, damage or other loss to person or property howsoever arising from such assistance.	493 494 495 496
(i) The Charterers-Owners shall upon request be named as co-insured together with the Charterers. The Owners shall upon request cause insurers to waive subrogation rights against the Charterers (as encompassed in Clause 12(a)(iii)). Co-insurance and/or waivers of subrogation shall be given only insofar as these relate to liabilities which are properly the responsibility of the Owners under the terms of this Charter Party.	431 432 433 434 435 436	16. Lien	497
(b) The Owners-Charterers shall upon request furnish the Charterers-Owners with certificates of insurance which provide sufficient information to verify that the Owners-Charterers have complied with the insurance requirements of this Charter Party.	437 438 439	The Owners shall have a lien upon all cargoes for all claims against the Charterers under this Charter Party and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned. The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel. Except as provided in Clause 12, the Charterers shall indemnify and hold the Owners harmless against any lien of whatsoever nature arising upon the Vessel during the Charter Period while she is under the control of the Charterers, and against any claims against the Owners arising out of the operation of the Vessel by the Charterers or out of any neglect of the Charterers in relation to the Vessel or the operation thereof. Should the Vessel be arrested by reason of claims or liens arising out of her operation hereunder, unless brought about by the act or neglect of the Owners, the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released and at their own expense put up bail to secure release of the Vessel.	498 499 500 501 502 503 504 505 506 507 508 509 510 511 512 513
(c) If the Owners-Charterers fail to comply with the aforesaid insurance requirements, the Charterers-Owners may, without prejudice to any other rights or remedies under this Charter Party, purchase similar coverage and invoice an amount of the insurance costs as additional hire deduct the cost thereof from any payment due to the Owners under this Charter Party.	440 441 442 443	17. Sublet and Assignment	514
15. Saving of Life and Salvage	444	(a) Charterers. The Charterers shall have the option of subletting, assigning or leasing the Vessel to any person or company not competing with the Owners, subject to the Owners' prior approval which shall not be unreasonably withheld, upon giving notice in writing to the Owners, but the original Charterers shall always remain responsible to the Owners for due performance of the Charter Party and contractors of the person or company taking such subletting, assigning or loan shall be deemed contractors of the Charterers for all the purposes of this Charter Party. The Owners make it a condition of such consent that additional hire shall be paid as agreed between the Charterers and the Owners having regard to the nature and period of any intended service of the Vessel.	515 516 517 518 519 520 521 522 523 524 525
(a) The Vessel shall be permitted to deviate for the purpose of saving life at sea without prior approval of or notice to the Charterers and without loss of hire provided however that notice of such deviation is given as soon as possible.	445 446 447 448	(b) If the Vessel is sublet, assigned or loaned to undertake rig anchor handling and/or towing operations connected with equipment, other than that used by the Charterers, then a daily increment to the hire in the amount as stated in Box 20 or pro-rata shall be paid for the period between departure for such operations and return to her normal duties for the Charterers.	526 527 528 529 530
(b) Subject to the Charterers' consent, which shall not be unreasonably withheld, the Vessel shall be at liberty to undertake attempts at salvage, it being understood that the Vessel shall be off hire from the time she leaves port or commences to deviate and she shall remain off-hire until she is again in every way ready to resume the Charterers' service at a position which is not less favourable to the Charterers than the position at the time of leaving port or deviating for the salvage services.	449 450 451 452 453 454 455	(c) Owners. The Owners may not assign or transfer any part of this Charter Party without the written approval of the Charterers, which approval shall not be unreasonably withheld.	531 532 533
All salvage monies earned by the Vessel shall be divided equally between the Owners and the Charterers, after deducting the Master's, Officers' and Crew's share, legal expenses, value of fuel and lubricants consumed, Hire of the Vessel lost by the Owners during the salvage, repairs to damage sustained, if any, and any other extraordinary loss or expense sustained as a result of the salvage.	456 457 458 459 460 461	Approval by the Charterers of such subletting or assignment shall not relieve the Owners of their responsibility for due performance of the part of the service which is sublet or assigned.	534 535 536
The Charterers shall be bound by all measures taken by the Owners in order to secure payment of salvage and to fix its amount.	462 463	18. Substitute Vessel	537
(c) The Owners shall waive their right to claim any award for salvage performed on property owned by or contracted to the Charterers, always provided such property was the object of the operation the Vessel was chartered for, and the Vessel shall remain on hire when rendering salvage services to such property. This waiver is without prejudice to any right the Vessel's Master, Officers and Crew may have under any title.	464 465 466 467 468 469	The Owners shall be entitled at any time, whether before delivery or at any other time during the Charter Period, to provide a substitute vessel, subject to	538 539

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**PART II**  
**"SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels**

the Charterers' prior approval which shall not be unreasonably withheld.	540	Notwithstanding the terms of <u>Clause 11</u> Hire shall be paid for all time lost including any lost owing to loss of or sickness or injury to the Master, Officers, Crew or passengers or to the action of the Crew in refusing to proceed to such place or to be exposed to such risks.	612 613 614 615
<b>19. War</b>	541		
(a) Unless the consent of the Owners be first obtained, the Vessel shall not be ordered nor continue to any port or place or on any voyage nor be used on any service which will bring the Vessel within a zone which is dangerous as a result of any actual or threatened act of war, war, hostilities, warlike operations, acts of piracy or of hostility or malicious damage against this or any other vessel or its cargo by any person, body or state whatsoever, revolution, civil war, civil commotion or the operation of International law, nor be exposed in any way to any risks or penalties whatsoever consequent upon the imposition of sanctions, nor carry any goods that may in any way expose her to any risks of seizure, capture, penalties or any other interference of any kind whatsoever by the belligerent or fighting powers or parties or by any government or rulers.	542 543 544 545 546 547 548 549 550 551 552 553		
(b) Should the Vessel approach or be brought or ordered within such zone, or be exposed in any way to the said risks, (i) the Owners shall be entitled from time to time to insure their interest in the Vessel for such terms as they deem fit up to its open market value and also in the Hire against any of the risks likely to be involved thereby, and the Charterers shall make a refund on demand of any additional premium thereby incurred, and (ii) notwithstanding the terms of <u>Clause 11</u> Hire shall be payable for all time lost including any loss owing to loss of or injury to the Master, Officers, Crew or passengers or to refusal by any of them to proceed to such zone or to be exposed to such risks.	554 555 556 557 558 559 560 561 562		
(c) In the event of additional insurance premiums being incurred or the wages of the Master and/or Officers and/or Crew and/or the cost of provisions and/or stores for deck and/or engine room being increased by reason of or during the existence of any of the matters mentioned in sub-clause (a) the amount of any additional premium and/or increase shall be added to the Hire, and paid by the Charterers on production of the Owners' account therefor, such account being rendered monthly.	563 564 565 566 567 568 569		
(d) The Vessel shall have liberty to comply with any orders or directions as to departure, arrival, routes, ports of call, stoppages, destination, delivery or in any other way whatsoever given by the government of the nation under whose flag the Vessel sails or any other government or any person (or body) acting or purporting to act with the authority of such government or by any committee or person having under the terms of the war risks insurance on the Vessel the right to give any such orders or directions.	570 571 572 573 574 575 576		
(e) In the event of the outbreak of war (whether there be a declaration of war or not) between any of the countries stated in <u>Box 30</u> or in the event of the nation under whose flag the Vessel sails becoming involved in war (whether there be a declaration of war or not) either the Owners or the Charterers may terminate this Charter Party, whereupon the Charterers shall redeliver the Vessel to the Owners in accordance with <u>PART I</u> if it has cargo on board after discharge thereof at destination or, if debarré under this Clause from reaching or entering it, at a near open and safe port or place as directed by the Owners, or if the Vessel has no cargo on board, at the port or place at which it then is or if at sea at a near, open and safe port or place as directed by the Owners. In all cases Hire shall continue to be paid and, except as aforesaid, all other provisions of this Charter Party shall apply until redelivery.	577 578 579 580 581 582 583 584 585 586 587 588		
(f) If in compliance with the provisions of this Clause anything is done or is not done, such shall not be deemed a deviation. The Charterers shall procure that all Bills of Lading (if any) issued under this Charter Party shall contain the stipulations contained in sub-clauses (a), (d) and (f) of this Clause.	589 590 591 592 593		
<b>20. Excluded Ports</b>	594		
(a) The Vessel shall not be ordered to nor bound to enter without the Owners' written permission (a) any place where fever or epidemics are prevalent or to which the Master, Officers and Crew by law are not bound to follow the Vessel;	595 596 597 598		
(b) any ice-bound place or any place where lights, lightships, marks and buoys are or are likely to be withdrawn by reason of ice on the Vessel's arrival or where there is risk that ordinarily the Vessel will not be able on account of ice to reach the place or to get out after having completed her operations. The Vessel shall not be obliged to force ice nor to follow an icebreaker. If, on account of ice, the Master considers it dangerous to remain at the loading or discharging place for fear of the Vessel being frozen in and/or damaged he has liberty to sail to a convenient open place and await the Charterers' fresh instructions.	599 600 601 602 603 604 605 606		
(b) Should the Vessel approach or be brought or ordered within such place, or be exposed in any way to the said risks, the Owners shall be entitled from time to time to insure their interests in the Vessel and/or Hire against any of the risks likely to be involved thereby on such terms as they shall think fit, the Charterers to make a refund to the Owners of the premium on demand.	607 608 609 610 611		
<b>21. General Average and New Jason Clause</b>	616		
General Average shall be adjusted and settled in London unless otherwise stated in <u>Box 31</u> , according to York/Antwerp Rules, 1974, as may be amended. Hire shall not contribute to General Average. Should adjustment be made in accordance with the law and practice of the United States of America, the following provision shall apply:	617 618 619 620 621		
"In the event of accident, danger, damage or disaster before or after the commencement of the voyage, resulting from any cause whatsoever, whether due to negligence or not, for which, or for the consequences of which, the Owners are not responsible, by statute, contract or otherwise, the cargo, shippers, consignees or owners of the cargo shall contribute with the Owners in General Average to the payment of any sacrifices, loss or expenses of a General Average nature that may be made or incurred and shall pay salvage and special charges incurred in respect of the cargo.	622 623 624 625 626 627 628 629		
If a sailing vessel is owned or operated by the Owners, salvage shall be paid for as fully as if the said sailing vessel or vessels belonged to strangers. Such deposit as the Owners, or their agents, may deem sufficient to cover the estimated contribution of the cargo and any salvage and special charges thereon shall, if required, be made by the cargo, shippers, consignees or owners of the cargo to the Owners before delivery."	630 631 632 633 634 635		
<b>22. Both-to-Blame Collision Clause</b>	636		
If the Vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the Master, mariner, pilot or the servants of the Owners in the navigation or the management of the Vessel, the Charterers will indemnify the Owners against all loss or liability to the other or non-carrying ship or her owners insofar as such loss or liability represent loss of or damage to, or any claim whatsoever of the owners of any goods carried under this Charter Party paid or payable by the other or non-carrying ship or her owners to the owners of the said goods and set-off, recouped or recovered by the other or non-carrying ship or her owners as part of their claim against the Vessel or the Owners. The foregoing provisions shall also apply where the owners, operators or those in charge of any ship or ships or objects other than or in addition to the colliding ships or objects are at fault in respect of a collision or contact.	637 638 639 640 641 642 643 644 645 646 647 648 649		
<b>23. Structural Alterations and Additional Equipment</b>	650		
The Charterers shall have the option of, at their expense, making structural alterations to the Vessel or installing additional equipment with the written consent of the Owners which shall not be unreasonably withheld but unless otherwise agreed the Vessel is to be redelivered reinstated, at the Charterers' expense, to her original condition. The Vessel is to remain on hire during any period of these alterations or reinstatement. The Charterers, unless otherwise agreed, shall be responsible for repair and maintenance of any such alteration or additional equipment.	651 652 653 654 655 656 657 658		
<b>24. Health and Safety</b>	659		
The Owners/Charterers shall comply with and adhere to all applicable International, national and local regulations pertaining to health and safety, and such Charterers' Owners' instructions as may be appended hereto.	660 661 662		
<b>25. Taxes</b>	663		
Each party shall pay taxes due on its own profit, income and personnel. The Charterers shall pay all other taxes and dues arising out of the operation or use of the Vessel during the Charter Period.	664 665 666		
In the event of change in the Area of Operation or change in local regulation and/or interpretation thereof, resulting in an unavoidable and documented change of the Owners' tax liability after the date of entering into the Charter Party or the date of commencement of employment, whichever is the earlier, Hire shall be adjusted accordingly.	667 668 669 670 671		
<b>26. Early Termination</b>	672		
(a) <u>For Charterers' Convenience</u> . - The Charterers may terminate this Charter Party at any time by giving the Owners written notice as stated in <u>Box 15</u> and by paying the settlement stated in <u>Box 14</u> and the demobilisation charge stated in <u>Box 16</u> , as well as Hire or other payments due under the Charter Party.	673 674 675 676 677		
(b) <u>For Cause</u> . - If either party becomes informed of the occurrence of any	678		

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## PART II

### "SUPPLYTIME 89" Uniform Time Charter Party for Offshore Service Vessels

event described in this Clause that party shall so notify the other party promptly in writing and in any case within 3 days after such information is received. If the occurrence has not ceased within 3 days after such notification has been given, this Charter Party may be terminated by either party, without prejudice to any other rights which either party may have, under any of the following circumstances:	679	disclosed without the prior written consent of the Charterers. The Owners shall use their best efforts to ensure that the Owners, any of their sub-contractors, and employees and agents thereof shall not disclose any such information or data.	740
(i) <u>Requisition</u> . - If the government of the state of registry and/or the flag of the Vessel, or any agency thereof, requisitions for hire or title or otherwise takes possession of the Vessel during the Charter Period.	680		741
(ii) <u>Confiscation</u> . - If any government, individual or group, whether or not purporting to act as a government or on behalf of any government, confiscates, requisitions, expropriates, seizes or otherwise takes possession of the Vessel during the Charter Period.	681		742
(iii) <u>Bankruptcy</u> . - In the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver is appointed or if it suspends payment or ceases to carry on business.	682		743
(iv) <u>Loss of Vessel</u> . - If the Vessel is lost, actually or constructively, or missing, unless the Owners provide a substitute vessel pursuant to Clause 18. In the case of termination, Hire shall cease from the date the Vessel was lost or, in the event of a constructive total loss, from the date of the event giving rise to such loss. If the date of loss cannot be ascertained or the Vessel is missing, payment of Hire shall cease from the date the Vessel was last reported.	683		
(v) <u>Breakdown</u> . - If, at any time during the term of this Charter Party, a breakdown of the Owners' equipment or Vessel results in the Owners' being unable to perform their obligations hereunder for a period exceeding that stated in Box 32, unless the Owners provide a substitute vessel pursuant to Clause 18.	684		
(vi) <u>Force Majeure</u> . - If a force majeure condition as defined in Clause 27 prevails for a period exceeding 15 consecutive days.	685		
(vii) <u>Default</u> . - If either party is in repudiatory breach of its obligations hereunder.	686		
Termination as a result of any of the above mentioned causes shall not relieve The Charterers of any obligation for Hire and any other payments due.	687		
27. <u>Force Majeure</u>	688		
Neither the Owners nor the Charterers shall be liable for any loss, damages or delay or failure in performance hereunder resulting from any force majeure event, including but not limited to acts of God, fire, action of the elements, epidemics, war (declared or undeclared), warlike actions, insurrection, revolution or civil strife, piracy, civil war or hostile action, strikes or differences with workmen (except for disputes relating solely to the Owners' or the Charterers' employees), acts of the public enemy, federal or state laws, rules and regulations of any governmental authorities having or asserting jurisdiction in the premises or of any other group, organisation or informal association (whether or not formally recognised as a government), and any other cause beyond the reasonable control of either party which makes continuance of operations impossible.	689		
28. <u>Notices and Invoices</u>	690		
Notices and invoices required to be given under this Charter Party shall be given in writing to the addresses stated in Boxes 21, 35 and 36 as appropriate.	691		
29. <u>Wreck Removal</u>	692		
If the Vessel sinks and becomes a wreck and an obstruction to navigation and has to be removed upon request by any compulsory law or authority having jurisdiction over the area where the wreck is placed, the Owners shall be liable for any and all expenses in connection with the raising, removal, destruction, lighting or marking of the wreck.	693		
30. <u>Confidentiality</u>	694		
All information or data obtained by the Owners in the performance of this Charter Party is the property of the Charterers, is confidential and shall not be	695		
31. <u>Law and Arbitration</u>	696		
(a) This Charter Party shall be governed by English-Norwegian law and any dispute arising out of this Charter Party shall be referred to arbitration in London, an arbitrator being appointed by each party, in accordance with the Norwegian Arbitration Acts 1960 and 1979 or any statutory modification or re-enactment thereof for the time being in force. On the receipt by one party of the nomination in writing of the other party's arbitrator that party shall appoint their arbitrator within 14 days, failing which the arbitrator already appointed shall act as sole arbitrator. If two arbitrators properly appointed shall not agree they shall appoint an umpire whose decision shall be final.	697		744
(b) Should any dispute arise out of this Charter Party, the matter in dispute shall be referred to three persons at New-York/Oslo, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for purpose of enforcing any award, this agreement may be made a rule of the Court. The arbitrators shall be members of the Society of Maritime Arbitrators, Inc. of New York and the proceedings shall be conducted in accordance with the rules of the Society.	698		745
(c) Any dispute arising out of this Charter Party shall be referred to arbitration at the place stated in Box 33 subject to the law and procedures applicable there.	699		746
(d) If Box 33 in PART I is not filled in, sub-clause (a) of this Clause shall apply.	700		747
(e), (b) and (c) are alternatives; state alternative agreed in Box 33	701		748
32. <u>Entire Agreement</u>	702		749
This is the entire agreement of the parties, which supersedes all previous written or oral understandings and which may not be modified except by a written amendment signed by both parties.	703		750
33. <u>Severability Clause</u>	704		751
If any portion of this Charter Party is held to be invalid or unenforceable for any reason by a court or governmental authority of competent jurisdiction, then such portion will be deemed to be stricken and the remainder of this Charter Party shall continue in full force and effect.	705		752
34. <u>Demise</u>	706		753
Nothing herein contained shall be construed as creating a demise of the Vessel to the Charterers.	707		754
35. <u>Definitions</u>	708		755
"Well" is defined for the purposes of this Charter Party as the time required to drill, test, complete and/or abandon a single borehole including any side-track thereof.	709		756
"Offshore unit" is defined for the purposes of this Charter Party as any vessel, offshore installation, structure and/or mobile unit used in offshore exploration, construction, pipelaying or repair, exploitation or production.	710		757
"Offshore site" is defined for the purposes of this Charter Party as the area within three nautical miles of an "offshore unit" from or to which the Owners are requested to take their Vessel by the Charterers.	711		758
"Employees" is defined for the purposes of this Charter Party as employees, directors, officers, servants, agents or invitees.	712		759
36. <u>Headings</u>	713		760
The headings of this Charter Party are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Charter Party.	714		761

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**ADDITIONAL AGREEMENT  
TO  
SUPPLYTIME 89 DATED 12 MAY 2005  
"ALDOMA"**

**1. Profit split**

In addition to the charter hire payable pursuant to box 19 the Owners and the Charterers have agreed a profit split of any average daily net earnings (inclusive of Part II clause 7 items) above the levels set out below in any 90 day period as follows:

From 6 March 2006-5 May 2007 above USD 9,000 per day - split 50/50  
From 6 May 2007-5 May 2008 above USD 9,500 per day - split 50/50  
From 6 May 2008-5 May 2009 above USD 10,000 per day - split 50/50

By way of example if the net daily rate is USD 10,000 in the first period an additional USD 500 per day is payable to the Owners being 50% of the rate above USD 9,000.

Any additional hire payable pursuant to this additional clause shall be paid upon closing of books for the period, but not later than 10 banking days after the expiry of each 90 day period.

The Charterers will provide the Owners with monthly reports of earnings and will on request provide copies of sub-charterparties and freight invoices and other relevant documentation. The Owners shall be entitled to appoint an auditor to review the documents relevant to calculate the earnings.

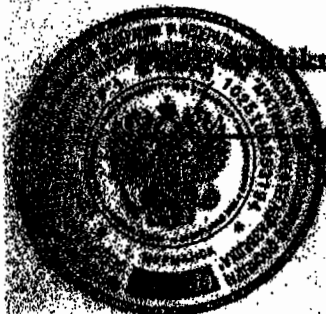
**2. Russian crew**

The Owners may require that the Charterers employ Russian crew as provided by the Owners, provided the Owners provide crew with suitable experience and with necessary qualifications to comply with any sub charter or other contractual commitment for the vessel. The crew shall be employed on 4 months on 4 months off basis and Charterers shall pay the crew's replacement costs.

**3. Bank Guarantee**

Against cancellation of the security provided for the Charterers' obligations under the previous charter agreement between the parties for the Aldoma, the Charterers will provide the Owners with a bank guarantee in Owners' favour in an amount of NOK 150,000 as security for Charterers' obligations towards the Owners hereunder.

12 May 2005



*[Signature]*  
AS

## **EXHIBIT 4**

**SIDELETTER SUPPLYTIME 89 DATED 12 MAY 2005**

**"ALDOMA"**

The vessel will continue operation under her present sub-charter arrangement with Rolv Berg Drive AS till this arrangement is either terminated or otherwise expire. There shall not be given any extension or further charter parties (inclusive of any already agreed options) with Rolv Berg Drive AS without the prior written consent of the Owner.

The Owner shall further give their prior written consent to any charter where the charterhire in any new period after the Rolv Berg Drive AS firm period give the owner an additional hire of less than USD 1000,- by way of the profit split.

The Owners:

  
Oleg S Mutsakanyan  
Director General



The Charterers:

  
Svein Hoel  
Director



## **EXHIBIT 5**

## North Offshore AS

### Statement of Accounts 31 August 2007

	2007	2006
<b>OPERATING REVENUES AND EXPENSES</b>		
<b>Operating Revenue</b>		
Freight earnings	12 225 310	15 497 430
Other operating revenue	294 191	510 169
<b>Total operating revenue</b>	<b>13 519 501</b>	<b>16 007 600</b>
<b>Operating Costs</b>		
Wages and other personnel expenses	2 172 507	2 818 558
Depreciation of business assets	744 811	951 056
Other operating costs	14 090 294	9 255 271
<b>Total operating costs</b>	<b>17 007 612</b>	<b>13 024 886</b>
<b>TOTAL OPERATING REVENUES</b>	<b>-3 488 110</b>	<b>2 982 714</b>
<b>FINANCIAL INCOME AND EXPENSES</b>		
Results from investment in shares in limited partnerships ("KS")	0	0
Financial Income	746 633	902 841
Interest expenses relating to entities within the same corporation	0	0
Other financial expenses	586 487	749 939
<b>NET FINANCIAL ITEMS</b>	<b>160 146</b>	<b>-152 902</b>
<b>NET PROFIT BEFORE TAX</b>	<b>-3 327 964</b>	<b>3 135 616</b>
Tax	0	0
Correction deferred tax	0	0
<b>Profit</b>	<b>-3 327 964</b>	<b>3 135 616</b>
<b>TRANSFER</b>		
Received / Submitted group contribution	0	0
Transfer other equity	0	0
<b>TOTAL TRANSFER</b>	<b>0</b>	<b>0</b>

## North Offshore AS

### Balance Sheet 31 August 2007

<b>ASSETS</b>	<b>2007</b>	<b>2006</b>
<b>FIXED ASSETS</b>		
<b>Business assets</b>		
Vessels	379 361	1 013 372
Reconstruction of leased vessels	0	0
Periodical maintenance	7 239 342	219 018
Movable property, inventory, tools, office equipment	440 187	818 771
<b>Financial assets</b>		
Investments subsidiary companies	2 887 050	2 770 800
Investments limited partnerships ("KS")	587 350	1 152 539
Other claims	0	1 566 756
<b>Total assets</b>	<b>11 533 290</b>	<b>7 541 256</b>
<b>CURRENT ASSETS</b>		
Accounts receivable	11 362 742	5 107 928
Other claims	1 130 539	7 988 622
Bank deposits	0	482 111
<b>Total Current Assets</b>	<b>12 493 280</b>	<b>13 578 661</b>
<b>TOTAL ASSETS</b>	<b>24 026 570</b>	<b>21 119 917</b>

**North Offshore AS**

<b><u>EQUITY AND LIABILITES</u></b>	<b><u>2007</u></b>	<b><u>2006</u></b>
<b>EQUITY</b>		
<b>Deposited equity</b>		
Capital stock	100 700	100 700
Share premium account	40 000	40 000
<b>Total deposited equity</b>	<b>140 700</b>	<b>140 700</b>
<b>Earned equity</b>		
Other equity	5 974 137	5 348 082
This year's profit (untaxed)	-3 327 964	3 135 616
<b>Total earned equity</b>	<b>2 646 173</b>	<b>8 483 697</b>
<b>Total equity</b>	<b>2 786 873</b>	<b>8 624 397</b>
<b>LIABILITES</b>		
<b>Long-term provisions</b>		
Deferred tax liability	3 976 411	8 986 303
Payable tax	0	0
<b>Total appropriation for obligations</b>	<b>3 976 411</b>	<b>8 986 303</b>
<b>Other long-term liabilities</b>		
Credit institutions	0	0
Other long-term debt	0	0
<b>Total long-term liabilities</b>	<b>0</b>	<b>0</b>
<b>Short-term liabilities</b>		
Credit institutions	2 328 523	0
Accounts payable	14 211 143	2 138 962
Contributions payable	0	-53 555
Other short-term liabilities	723 621	1 423 809
<b>Total short-term liabilities</b>	<b>17 263 286</b>	<b>3 509 217</b>
<b>TOTAL EQUITY AND LIABILITIES</b>	<b>24 026 570</b>	<b>21 119 917</b>

## **EXHIBIT 6**



## North Offshore

### Noen spesifikasjoner på rapport pr. 31.08.09

<b>Annen driftskostnad</b>	<b>14,090,294</b>	
Proviand		376550
Frakt		8932
Smørolje		478374
Bunkers		-323983
Vann, vask og rengjøring		22887
Bareboatleie (til russerne)		7602029
Administrasjonskostnader		571971
Diverse driftskostnader (agent og havnekostn.)		155382
Rekvistita (dette er til bruk på skipet)		154354
Arbeidsklær		16830
Løpende vedlikehold		891141
Periodisk vedlikehold (avskrivning på dokking)		3764
Disponenthonorar (til Troms)		666672
Andre adm. Kostn (advokat/annen bistand)		1589932
Kurskostnader (mannskap)		163324
It-kostnader		27645
Telekommunikasjon		125034
Reisekostnader mannskap		885289
Forsikring skip		248031
Tap på fordringer		426134
<b>Annen finanskostnad</b>	<b>586,487</b>	
Rentekostnader		120296
Agio tap		466191
<b>Periodisk vedlikehold</b>	<b>7,239,342</b>	
<b>Kundefordringer</b>	<b>11,362,742</b>	
Av dette ugjør kravet mot RBD		6,135,000
<b>Andre fordringer</b>	<b>1,130,539</b>	
Dette er i hovesak periodiserte forskuddsbetalte kostnader.		
<b>Annen egenkapital</b>	<b>5,974,137</b>	
<b>Annen kortsiktig gjeld</b>	<b>723,621</b>	

## **EXHIBIT 7**

Michael J. Frevola (MJF 8359)  
Christopher R. Nolan (CRN 4438)  
HOLLAND & KNIGHT LLP  
195 Broadway  
New York, NY 10007-3189  
(212) 513-3200

ATTORNEYS FOR PLAINTIFF  
NORTH OFFSHORE AS

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

NORTH OFFSHORE AS,

Plaintiff,

-against-

ROLV BERG DRIVE AS,

Defendant.

07 Civ. 3095 (SHS)

**AFFIRMATION OF OLEG S.  
MNATSAKANYAN PURSUANT  
TO 28 U.S.C. § 1746 IN SUPPORT  
OF PLAINTIFF'S OPPOSITION  
TO DEFENDANT'S MOTION  
FOR COUNTER-SECURITY**

I, OLEG S. MNATSAKANYAN, hereby affirm as follows:

1. I am the Director General of Arktiknornestegazrazvedka ("AMNGR"), the owner of the AHTS ALDOMA (the "Vessel"). The facts provided herein are based on my own personal knowledge.

2. I am providing this affirmation in support of the opposition of North Offshore AS ("North Offshore") to a motion filed by Rolv Berg Drive AS ("RBD") for counter-security in the above-captioned proceeding.

3. My company entered into a time charter party with North Offshore on March 6, 2006 for a period of 14 months until May 2007. That time charter included 2 one year options. I annex as Exhibit 1 true copies of faxes dated February 14, 2006 and March 29, 2006 from my First Deputy Director General Nikolay A. Orlov confirming the parties' entry into the time charter.

4. With regard to the extra one year options provided under the time charter, we specifically reserved the right to withhold these options unless North Offshore increased the daily charter hire to us in an amount that reflected the present rates in the market.

5. On or about November 28, 2006, RBD's Norwegian lawyers contacted our Norwegian lawyers to inquire regarding the terms of the Vessel's time charter between AMNGR and North Offshore.

6. On January 8, 2007, my company was contacted by RBD regarding "[h]ire of the offshore vessel MS Aldoma from AMNGR to Rolv Berg Drive when she is off-contract in April 2007." A true copy of the letter to us from RBD and the Murmansk Consulting Group Ltd. is annexed as Exhibit 2.

7. On January 16, 2007, we met with representatives of RBD at the offices of the Murmansk Consulting Group Ltd. At that meeting, Mr. Valery A. Chulkov, my Deputy, explained to the RBD representatives that the negotiations on the new contract for the Vessel would not commence until the expiration of the North Offshore time charter in 2009.

8. On January 29, 2007, my company's Norwegian lawyers wrote to RBD's lawyers and made clear that AMNGR retained the right to refuse to grant North Offshore its option extensions unless North Offshore obtained a significant increase in the daily charter hire rate that RBD offered in the amount of \$9,000. A true copy of the January 29, 2007 e-mail from my

company's Norwegian lawyers to RBD's Norwegian lawyers is annexed as Exhibit 3. That e-mail specifically addressed the requirements that North Offshore would have to fulfill in order to qualify for the extension option under the AMNGR/North Offshore time charter:

*Arktik [AMNGR] has concluded a C/P [charter party] with NO [North Offshore] for a period up to 5<sup>th</sup> May 2009, including two options on one year each. The C/P also include a right for Arktik 1) to refuse NO to extend existing agreements with sub-charterers [RBD] and 2) to refuse conclusion of new C/P or extension of C/P not giving Arktik a substantial increase in the charter hire (the sum of basic charter hire and part of profit split). NO will not receive such approval for a rate of USD 9.000 which is the rate in the conditional option included in the C/P between RBD and NO (we have recently received a copy of this C/P). The market rate is far above USD 9.000 and Arktik as owner is seeking arrangement giving the owner of the vessel a substantial part of the market rate.*

Exhibit 3.

9. That same e-mail also responded to following inquiry from RBD: "[i]s there anything preventing RBD from exercising their option agreement with North [Offshore]?" In response, our lawyers made clear that control of whether RBD could obtain their option period under the RBD/North Offshore charter was governed by whether the charter rates offered for the extension periods satisfied our profit requirements:

*Arktik has the right to refuse NO to extend the relation with RBD without any reason and Arktik has an all over right to refuse sub-charterers not giving Arktik a certain amount in a profit split regime. Arktik has not evaluated whether RBD should be accepted or not, but want NO to conclude a sub-charter agreement on market terms entitling Arktik a profit split in the option periods.*

Exhibit 3.

10. RBD sought to charter the ALDOMA for additional time past May 2007 either through North Offshore or through Arktik directly. It is my understanding that RBD has claimed that the ALDOMA would have been used to fulfill a five year time charter that RBD claims that



it entered with a company named Oil & Natural Gas Corp ("ONGC"). The ONGC invitation to tender, however, contained requirements that the ALDOMA could not fulfill, including (a) the ALDOMA could not perform anchor handling at the depth required in the ONGC tender (1200 meters), (b) the ALDOMA does not have a chain locker capacity that met the requirements in the ONGC tender, and, perhaps most importantly, (c) the ALDOMA does not have a dynamic positioning system required under the ONGC tender which would allow the Vessel to precisely maintain station at one location.

11. The ONGC tender also required a five year charter term. We would not agree to such a charter term and, even if we were willing to agree, such a term also would have had to be approved by Ministry of Natural Resources of Russian Federation Federal Agency of Subsurface Use.

12. My company's charter party with North Offshore AS dated 12 May 2005 expired on the 6 May 2007.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1<sup>st</sup> day of October, 2007 at the office of Arktikmorneftegazrazvedka, Kolskij.str 1, 183032, Murmansk, Russia.



  
LEG S. MNATSAKANYAN


## **EXHIBIT 1**

Case 1:07-cv-11502-SHS Document 1-6

ORAC NO. :

FEB. 14 2006 16:11 CTP1

6/10

Kolskij, str 1 183032 Murmansk RUSSIA	 <b>ARKTIKMORNEFTEGAZRAZVEDKA</b> Federal State Unitary Enterprise FAX MESSAGE № 2/93	Fax 47 789 10 417 Phone 7 8152 254662 47 78910508 e-mail: amngr@amngr.ru
Fax №	47 22 81 43 01 47 77 67 99 77 47 21 44 95 13	Date 14-Feb-06
To	Steenstrup Stordrange DA, Oslo North Offshore AS AMNGR, Oslo	Pages 1
From	Arktikmorneftegazrazvedka, Murmansk	
Attention	Mr. Frode Henning Antonsen Mr. Uvizjev	
Subject	AHTS Aldoma	

Dear Sirs,

We have today agreed upon a new 14 months firm contract plus 2 years options, securing AHTS Aldoma for North Offshore AS. It remains subject to the approval from Federal Agency of Subsurface Use. Only after this approval receipt, the Contract may be signed by AMNGR. Claims regarding profit 2004 are closed as previously agreed.


Best regards,

  
 Nikolay A. Orlov  
 1st Deputy Director General

Уважаемые господа,

Сегодня мы согласовали новый контракт на 14 месяцев (фиксированный) и плюс опцион 2 года на аренду ТБС Алдома компанией North Offshore AS. Он подлежит согласованию с Федеральным Агентством по недропользованию. Только после получения этого разрешения контракт может быть подписан АМНУР. Претензии по прибыли за 2004 г. сняты по предварительному соглашению.

С уважением,

  
 Орлов Н.А.  
 1-й зам. ген. директора

Kolskij av.1 183032 Murmansk RUSSIA	 <b>ARKTIKMORNEFTEGAZRAZVEDKA</b> Federal State Unitary Enterprise FAX MESSAGE No. 2/211	Fax 47 789 10 417 Phone 7 8152 56 43 19 47 789 10 508 e-mail: omvs@amngr.ru
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Fax №	47 77 67 99 77	Date 29/03/2006
To	North Offshore AS	Page 1
From	Mr. Nikolay A. Orlov, 1-st Deputy Director General	
Attention	Mr. Svein Hoel	
Subject	Aldoma	

Dear Sirs,

We refer to our fax of 14 February 2006 and can confirm that the new 14 months firm contract securing AHTS Aldoma for North Offshore AS is approved by Federal Agency of Subsurface Use. The contract will now be signed by AMNGR and is effective from 6 March 2006.

Best regards,



Nikolay A. Orlov,  
1-st Deputy Director General

mark.dept.  
Rada Ovcharenko,  
+7 8132 254662

## **EXHIBIT 2**



OT : AMNR

OPAC NO. :

CEH. 25 2007 15:56 CTP2



**murmanskconsultinggroup**

Экспертная Группа

ООО "Мурманск Консалтинг Групп"  
Юридический адрес: Мурманск, ул. Кильдинская 1-148  
Почтовый адрес: Мурманск, пр. Ленина 24-4  
ИНН 15190127033/ КПП 1519001001  
Р/сч 40702810705000001610  
ОАО «ДНБ НОР Мончеганск», г. Мурманск  
К/сч 30101810300000000709  
БИК 044705709  
ОКПО 71889949  
ОКОНХ 71200

Иск. 02 от 08.01.2007

To

FSUE "Arktikmorneftegazrazvedka"  
General Director  
Mr. Mnatsakanjan Oleg

From

Mr Antonson, Tor Arne (Rolv Berg Drive AS)  
Mrs. Believa Olga (Murmansk Consulting Group, OOO)

Tromsø, Norway 28, December 2006

#### BUSINESS TOPICS IN THE OFFSHORE INDUSTRY

The company Rolv Berg Drive AS – situated in Tromsø, Norway – is requesting for a meeting with the top management of the company FSUE Arktikmorneftegazrazvedka to discuss

- 1) Idle AMNR-offshore vessels for international waters - specially Underwater Construction Vessels, Diving Vessels and Remotely Operated Vehicles?
- 2) AMNR Nowbuilding Program the coming years - possibility to hire idle vessels?
- 3) Hire of the offshore vessel MS Aldona from AMNR to Rolv Berg Drive AS when she is off contract in April 2007
- 4) Possible strategic co-operation in the Arctic Waters?

Rolv Berg Drive AS is working in both Indian and Mexican waters as well as other offshore regions with major state owned companies like Oil and Natural Gas Corporation Ltd (ONGC) -- a state owned company of India and the state-owned oil and gas company PEMEX in Mexico.

Proposed time for a meeting is 16th January 2007 in Murmansk.

Best regards  
ROLV BERG DRIVE AS

Tor Arne Antonson

ООО «Мурманск Консалтинг Групп»  
183038, Мурманск, пр. Ленина 24, офис 4,  
тел. +7 8152 259697, факс +7 8152 259608

ООО "Мурманск Консалтинг Групп"  
183038, Мурманск, Ленинский пр. 24, оф. 4  
тел. +7 8152 259697 факс +7 8152 259608

www.mcgr-murmansk.ru

Faks fra :

25/09/07 12:46 Sd: 2

## **EXHIBIT 3**

**Anders Evje**

---

**From:** Frode Henning Antonsen [frode.antonsen@steenstrup.no]  
**Sent:** 29. januar 2007 16:28  
**To:** Morten Lund  
**Cc:** suvizjev; Thor Ask Terkelsen; Magne Andersen  
**Subject:** RE: RBD - Arktik - North

We refer to your questions included in an e-mail dated 28<sup>th</sup> November 2006.

Arktik does not have any relations with Rolf Berg Drive (RBD) and have only a contract with North Offshore AS (NO). We have been told by both RBD and NO that there is a dispute between the parties. Arktik has not and will not have any opinion regarding the internal relations between RBD and NO. Arktik position is only related to the C/P with NO.

However, we have decided to answer your questions in order to clarify our position in this case towards NO.

Arktik has concluded a C/P with NO for a period up to 5<sup>th</sup> May 2009, including two options on one year each. The C/P also include a right for Arktik 1) to refuse NO to extend existing agreements with sub-charterers and 2) to refuse conclusion of new C/P or extension of C/P not giving Arktik a substantial increase in the charter hire (the sum of basic charter hire and part of profit split). NO will not receive such approval for a rate of USD 9.000 which is the rate in the conditional option included in the C/P between RBD and NO (we have recently received a copy of this C/P). The market rate is far above USD 9.000 and Arktik as owner is seeking arrangement giving the owner of the vessel a substantial part of the marked rate.

Question 1: The first issue is if it is correct that NO has "no further options with the ultimate owner of the vessel that includes Rolf Berg Drive AS. We do of course not ask for any comments on the option agreement between North and RBD. We would only like your comments on the option North has towards the Russian owners. Is it anything there preventing RBD from exercising their option agreement with North?" Answer 1: Arktik has the right to refuse NO to extend the relation with RBD without any reason and Arktik has an all over right to refuse sub-charterers not giving Arktik a certain amount in a profit split regime. Arktik has not evaluated whether RBD should be accepted or not, but want NO to conclude a sub-charter agreement on market terms entitling Arktik a profit split in the option periods.

Question 2: The second issue is if it, to your knowledge, is correct that "Aldoma" is already committed elsewhere after mid April 2007. Answer 2: We have not received any information from NO regarding future sub-charterers and await their proposals.

\*\*\*

We hope the above clarify the position of Arktik.

---

Med vennlig hilsen/Yours sincerely  
Advokatfirmaet Steenstrup Stordrange DA  
Frode Henning Antonsen

advokat

Ansvarlig advokat: Thor Ask Terkelsen

29.08.2007

email: [frode.antonсен@steenstrup.no](mailto:frode.antonсен@steenstrup.no)  
<http://www.steenstrup.no>

Mobil: + 47 480 16 508

Oslo:

Tel: (+47) 22 81 45 00 - Fax: (+47) 22 81 45 01  
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Tel: (+47) 73 99 27 00 - Fax: (+47) 73 99 27 01  
Beddingen 8, 7014 Trondheim, Norway

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29.08.2007

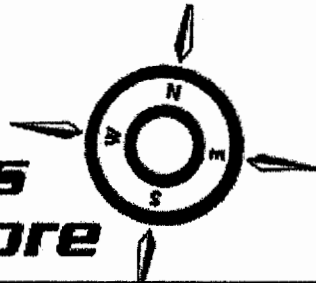
## **EXHIBIT 8**



Kristian Lindhartsen  
Advokatfullmektig

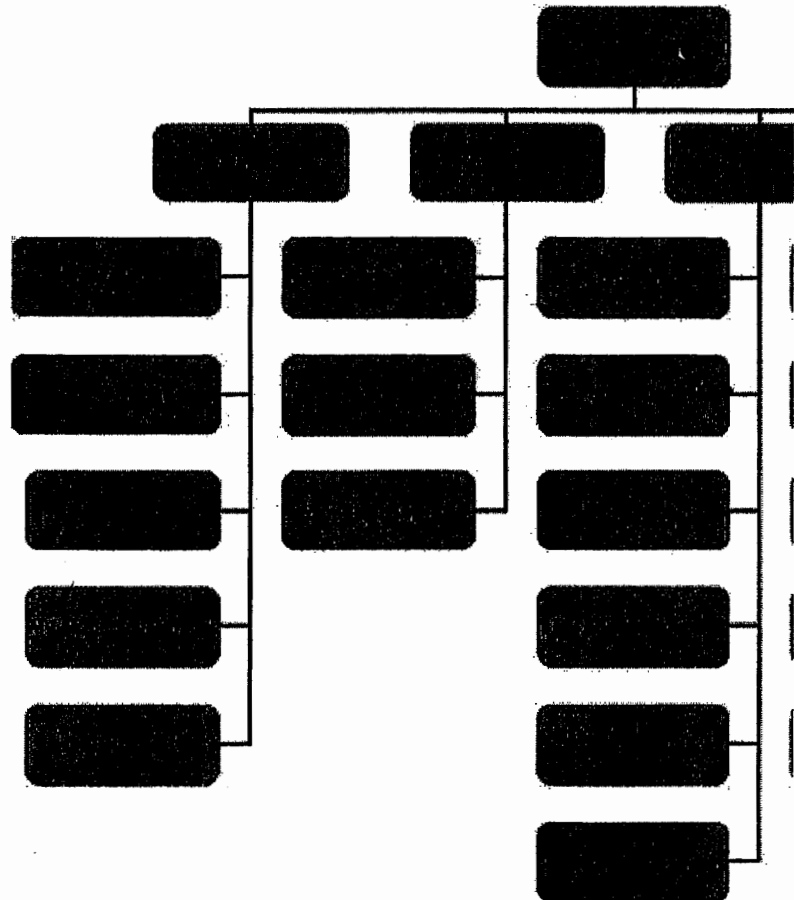
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Certified copy

**Troms  
Offshore**



- ☐ HOME
- ☐ HEAD OFFICE
- ☐ FLEET
- ☐ HSE
- ☐ HISTORY
- ☐ CONTACT
- ☐ LINKS
- ☐ JOIN US

## Fleet



*Kristian Lindhartsen*  
Rett Kjøper  
Advokatfullmektig  
Certified copy

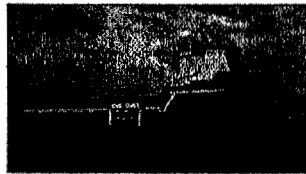
**MV Troms Fjord**



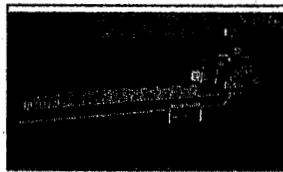
**GSP "Orion"**



**TBN**



**TBN**



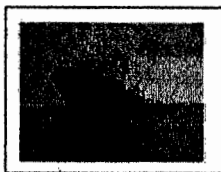
**MV "Troms Castor"**



**MV "Troms Pollux"**



**MV "Troms Vision"**



**KV "Chieftain"**



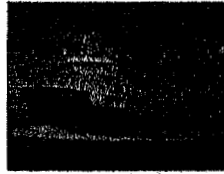
**MV "Bucentaur"**



**MV "Sical Torino"**

Kristian Lindhartsen  
Advokatfullmektig  
Rett kopi bekreftet  
Certified copy

MV "Sanko Angel"



MV "Troms Falken"



RV "Lance"



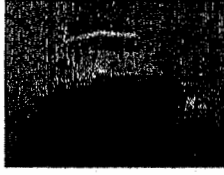
MV "Furgo Discovery"



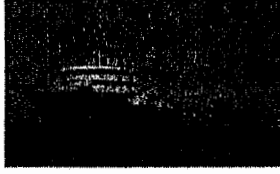
MV "Kovambo"



MV "Aldoma"



GSP "King"



GSP "Queen"

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